

THE  
ATTORNEY'S  
= **Compleat Guide**

IN THE

COURT OF COMMON PLEAS.

CONTAINING

The whole Modern PRACTICE of the  
Court, laid down in a new, fami-  
liar, and concise Manner, with Prac-  
tical Remarks on each Head, illus-  
trated by Cases selected from the best  
and latest Authorities:

AND ALSO

An Account of the Monies paid out of  
Pocket on each particular Article of Bu-  
siness at the Publick Offices and Judges  
Chambers; so as to enable the Young  
Clerk to prosecute or defend a SUIT  
from its COMMENCEMENT  
to JUDGMENT and EXECUTION,  
through all the different *Minutiæ* of Prac-  
tice, without further Assistance.

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By an ATTORNEY of the Court.

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L O N D O N :

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## Advertisement.

**T**HE following Sheets were at first composed merely for private Use: The great Advantage the Author has reaped from them in an extensive Practice is his chief Inducement for offering them to the Public, as a sure Guide whereby the Young Clerk may readily acquire every necessary Information with respect to this Court. Many Inaccuracies may have escaped Notice, notwithstanding the utmost Care and Attention; it is hoped, therefore, the experienced Practitioner will overlook with Candour the Defects that may be found, and all Hints for future Improvements will be gratefully attended to. The Author shall esteem it his greatest Happiness, should it appear

that he has done any Thing, tho' ever  
 so trivial, of Service to his Brethren;  
 —and whatever may be the Event of  
 this Mite thrown into the Public Treas-  
 ury, he flatters himself it will be re-  
 ceived as **the honest Endeavours** of a  
 Wellwisher to his Profession.

**THE**

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ERRATA.

# ERRATA:

*Page 71. Line 27. read, with filacer where writ issued, instead of, at the prothonotary's office. Page 97. Line 9. read, Dickins, instead of, Jones. Page 106. Line 30. read, Dickins, instead of, Lee. Page 109. Line 5. read, Dickins, instead of, Jones.*

THE

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T H E  
A T T O R N E Y ' s  
C O M P L E A T G U I D E

In the PRACTICE of the  
COURT of COMMON PLEAS.

**T**HE jurisdiction of the court of Common Pleas is general, and extends throughout *England*.

The authority of the court is in most cases founded on original writs issuing out of Chancery, though it holds plea on attachment of privilege issuing originally out of this court, at the suit of attornies, or other privileged persons thereof, and on original bills against such attornies, and other officers of the court, or against Peers and Members of Parliament. *Stat. 12 & 13 W. 3.*

In this court, real actions on which fines and recoveries do pass, and all other real actions by original writ, such as where the defendant claims title to any lands or tenements, rents or commons in fee-simple, fee-tail, or for term of life, are determined: In all personal and mixed  
B actions,



## The Modern Practice of the

actions, both this court, and the court of *K. B.* have an equal jurisdiction.

On proper grounds, this court grants *prohibitions* to keep temporal and ecclesiastical courts within their proper bounds and jurisdictions, though on no original writ or plea depending, because the common law in such cases is a prohibition of itself, and needs not an original. 12 *Coke* 108.

It grants the writ of *habeas corpus* to relieve persons imprisoned, and into this court actions also may be removed out of inferior courts of record, by writ of *habeas corpus cum causa*, or *certiorari*; when inferior court is not of record, they are removed by *pone*, *recordari*, *accedas ad curiam*, or writ of *false judgment*.

The court of course punishes its own officers and ministers, and all other persons who disobey its rules and orders.

This court hath no cognizance of pleas of the crown.

Judges of  
the court.

Lord Chief Justice, Sir WILLIAM DE GREY,  
Knight, *Lincoln's Inn Fields*.

Chambers in *Serjeant's Inn, Chancery Lane*.

Sir HENRY GOULD, Knight, resides at his  
Chambers in *Serjeant's Inn, Chancery Lane*.

Sir WILLIAM BLACKSTONE, Knight,  
*Lincoln's Inn Fields*.

Chambers in *Serjeant's Inn, Chancery Lane*.

Sir GEORGE NARES, Knight, *Carey Street*,  
near *Lincoln's Inn*.

Chambers in *Serjeant's Inn, Chancery Lane*.

Attend to do business in term from six to eight o'clock at their chambers in *Serjeant's Inn, Chancery Lane*; and some of them generally attend at chambers in vacation from eleven to one o'clock, if not on the circuit.

Officers of  
the court.

*Custos Brevium*, the present Patentee, George  
Henry, Earl of *Litchfield*.

His

Court of Common Pleas.

3

His Deputy, by whom the office is executed,  
*Walter Baynes, Esq; King's Bench Walks,  
Temple.*

Prothonotaries,

1. *Anthony Dickins, Esq;*
2. *J. Floyer, Esq;*
3. *William Manwaring, Esq;*

The office of Prothonotary is now executed by Mr.  
*Samuel Manley, No. 4. in Hare Court, Temple;*  
hours of attendance from nine in the morn-  
ing till one, both in term and vacation; and  
from four till eight in the evening in term,  
and to six o'clock in vacation.

Secondaries.

*Mr. Henry Fothergill, Mr. Henry Barnes, Mr. Ge-  
rard, Office, King's Bench Walks, Temple.*

Clerks of the Judgments.

*Mr. Philip Price, Mr. Thomas Buckle, Mr. Ro-  
land Lickbarrow. Office, King's Bench Walks,  
Temple.*

Clerks of the Docquets.

*Mr. Philip Price, Mr. Thomas Buckle, Mr.  
William Robinson. Office, King's Bench Walks,  
Temple.*

Clerks of the Reversals.

*Mr. Philip Price, Mr. Thomas Buckle, Mr.  
William Robinson.*

Clerk of the Treasury.

*Thomas Jefferies, Esq;*

Clerk of the Jurats.

*Mr. Brougham, for the counties of Middle-  
sex, Kent, Oxford, Hereford, Southampton,  
Wilts, Somerset, Westmoreland and Northum-  
berland, cities of London, Bristol, and town  
of Southampton.*

B 2

Mr.

# The Modern Practice of the

Mr. Brougham, for the counties of *Bucks*, *Cornwall*, *Surry*, *Hartford*, *Cambridge*, *Norfolk*, *Leicester*, *Derby*, *York*, *Bedford*, *Huntingdon*, *Monmouth*, *Warwick*, *Cumberland*, *Berks*, *Gloucester*, *Salop*, *Dorset*, *Northampton*, *Nottingham*, and town of *Nottingham*, *Suffolk* and *Sussex*, cities of *York*, *Coventry*, *Norwich*, towns of *Newcastle upon Tyne*, *Kingston upon Hull*, and borough of *Leicester*.

Mr. Brougham, for the county of *Devon*, city of *Exeter*, county of *Lincoln* and city of *Lincoln*, county and city of *Worcester*, counties of *Essex*, *Stafford*, *Rutland*, and city of *Gloucester*.

Treasury keeper, Mr. George Stubbs.

Filacers

*London* and *Middlesex*, executed by Mr. Roberts, *Pump Court*, *Temple*.

*Wilts*, and town and county of *Southampton*, executed by ditto.

*Westmoreland*, *Cumberland*, *Northumberland*, and town and county of *Newcastle upon Tyne*, executed by Messrs. *Poole* and *Gale*, *Clifford's Inn*.

County and city of *Lincoln*, *Thomas Silthorpe*, Esq; *Barnard's Inn*.

*Essex* and *Hertford*, executed by Mr. Grey, *Clifford's Inn*.

*Gloucester*, *Worcester*, *Hereford*, and *Cornwall*, and the cities of *Gloucester* and *Worcester*, *John Staples*, No. 2, in *Essex Court*, *Middle Temple*.

County and city of *York*, and county of the same city, and town of *Kingston upon Hull*, and county of the same town, executed by Mr. Grey, *Clifford's Inn*.

Counties of *Surry*, *Sussex*, *Kent*, and city of *Canterbury*, executed by ditto.

*Somerset*, *Dorset*, city of *Bristol* and town of *Pool*, *John Heberdine*, Esq; *King's Bench Office*.

County



# Court of Common Pleas.

5

*Bedford, Berks, Buckingham and Oxford, executed by Mr. Grey, Clifford's Inn.*

*Salop, Stafford, Northampton, Rutland, and city of Litchfield. John Roberts, Pump Court, Temple.*

*County of Norfolk, city of Norwich, and county of same city, ditto.*

*County of Suffolk, executed by Mr. Mitchell, Cooke's Court, Carey Street.*

*Devon, city of Exeter, and county of the same city, Rich Farwell, Esq; No. 1. Chancery Lane.*

*Counties of Cambridge and Huntingdon, William Ware, Esq; Staple's Inn.*

*Counties of Derby, Leicester, Nottingham, Warwick, city of Coventry, and town of Nottingham, executed by Mr. John Steele, Fetter Lane.*

*County of Monmouth, executed by Mr. Warray, New Inn.*

*Clerk of the Warrants, N. Rowe, Esq; his deputy Mr. Rich. Lee.*

*Clerk of the Essoigns, Mr. Wright, his deputy Mr. Gerard.*

*Clerk of the Juries. Mr. Harrison, at No. 8, in New Inn, executes this office as deputy to Mr. Thomas Bewer.*

*Clerk of the Return Office, and office of Inrolment of Writs, Etreats, &c. Nat. Rowe, Esq; his deputy Mr. Rich. Lee.*

*Clerk of the King's Silver, William Daw, Esq; executed by Mr. Rich Hussy.*

*Chirographer, Patentee, Sir George Colebrooke, Bart. Eliza Biscoe, Esq; his secondary, executes the office in Temple Lane.*

*Exigenter, Mr E. Lake, executed by Mr. Pickering Umfreville.*

*Clerk of the Superfedeas to the Exigent, executed by Mr. Robert Morris.*

*Clerk of the Outlawries, John Way, Esq; office in Portugal Street.*

*Clerk of the Recoveries, Mr. Geo. Byard.*

*The offices of Prothonotary, Secondary, Clerk of the Judgments, Clerk of the Docquets, Exigenter, Clerk of the Juries, Filacer, and*



## The Modern Practice of the

Clerk of the Reversals for the county of *Monmouth*, are executed by *Mr. Warry, New Inn*, for *Gwynn, Esq*;

The Seal Office is in *Church Court, Temple*, hours of attendance from nine to eleven in the morning, and from three to six in the afternoon, holidays excepted.

Clerk of the Errors, *Henry Barnes, Esq*; his deputy *Mr. Lewis, Paper Buildings*, in the *Temple*, attends from nine in the morning till one, and from three to eight.

Associate at *Nisi Prius* for *London and Middlesex*, *Mr. Thomas Lloyd, Lincoln's Inn, New Square*.

Marshall at *Nisi Prius* in *London and Middlesex*, *Robert Want, Esq; Fetter Lane*.

Crier at *Nisi Prius* in *London and Middlesex*, *Mr. Thomas Lawes*.

Chief Proclamator, *John Walker, Esq*.

The four Criers of the Court.

Court Keeper.

Porter of the Court.

Warden of the *Fleet*, ——— *Eyles, Esq*;

Clerk of the Papers and Rules of the *Fleet* prison, *Mr. Hopkins*.

Tipstaves. *Mr. Jordan* and *Mr. Hemmins*, to be heard of at *Serjeant's Inn* coffee-house, *Chancery Lane*.

The officers on the circuits are in general appointed by the respective judges; and any attorney applying at such judge's chambers, when the circuits are fixed, may be informed of any matter he may want to know.

### *Attornies and their Clerks.*

Regulations  
concerning  
attornies.

**A**TTORNIES before the *Stat. Westm* 13 *Ed. 1.* were made by letters patent under the Great Seal; but at present no person can be admitted an attorney, unless he has served a clerkship of five years to an attorney duly admitted, takes the appointed oaths, and be inrolled by the clerk of the warrants, who charges

## Court of Common Pleas.

7

Mon. charges nothing for same, after an examination  
Inn, with respect to his abilities by a judge of the  
court. *Stat. 2 Geo. 2.*

ours Quakers having served a clerkship agreeable  
the to statute, may be inrolled on their affirmation.  
fter. *Stat. 12 Geo. 2.*

his Attornies not inrolled, suing out any writ,  
the forfeit 50l. for each offence; clerks in the Ex-  
g till chequer, Chancery, Pipe Office, &c. attornies  
of the mayors, sheriffs, and dutchy courts, and  
officers of the courts at *Westminster* excepted.  
*Stat. 2 Geo. 2.* Made perpetual, 30 *Geo. 2.*

lessex, Attornies dismissed by one court for misde-  
ware. meanors, shall not, after certificate, be admit-  
lessex, ted to practise in another court. *Rule, Mich.*  
Mr. 1654. *C. B.*

An attorney serving as under-sheriff, or bai-  
ff of sheriff or liberty, shall not practise as an  
attorney during such employment, under pain  
of expulsion, and not to be re-admitted. *Mich.*  
1654. *C. B.*

No clerk of the peace, under-sheriff, &c.  
Flet to act as solicitor, attorney, or agent, at the  
sessions where he executes such office, under pe-  
nalty of 50l.

Chan Attornies acting as agents for persons not qua-  
lified, to be struck off the roll and committed.  
Stat. 22 *Geo. 2.*

It is forbidden by the justices of this court,  
upon pain of expulsion, that no attorney of this  
court permit any one to practise in his name,  
except in passing recoveries. *Hill. C. B. 14 &*  
*15 Car. 2.*

An attorney of the King's Bench cannot be  
admitted in this court without a new stamp for  
such admission. *Barnes's 4to Edit. 38.*

No attorney must have more than two arti-  
cle clerks at the same time, except the secon-  
dary of the court, who may have three clerks;  
nor permit unqualified persons to issue out writs  
in his name, on pain of being disabled from  
practise. *Stat. 2 Geo. 2.*

No

## The Modern Practice of the

No attorney must take or retain any article clerk after quitting business. *Stat. 22 Geo. 2.*

An attorney by an authority in writing from an attorney of another court, may sue out writ, prosecute, or defend in such court. *Stat. 2 Geo. 2. Made perpetual, 30 Geo. 2.*

Attornies incapacitated to be justices of the peace during such time they continue on the roll. *Stat. 5 Geo. 2.*

Attornies not liable to serve any parochial or other offices; and if appointed thereto, may bring their writ of privilege to discharge themselves therefrom. *Barnes 4to Edit. 37, 42.*

None to act as attornies at sessions, unless admitted according to 2 *Geo. 2.* under penalty of 50*l.* with treble costs; and attorney permitting persons not admitted to use his name in the courts of general or quarter sessions, subject to the like penalty: *Lancaster, Durbam, Chester, and dutchy of Lancaster*, or courts of great sessions in *Wales* excepted. *Stat. 22 Geo. 2.*

An attorney admitted in any of the courts at *Westminster*, may practise in any inferior court, unless such court by charter or prescription is restricted to a certain number of attornies, and hath a power to exclude all others. And if denied the privilege of acting, a *mandamus* will lie to restore him. *Stat. 6 Geo. 2.*

No attorney to be lessee in ejectment. *Mitch. 1654. C. B.*

An attorney, it is said, may be bail, if an housekeeper, &c. However, Rule, *Mitch. C. B. 6 Geo. 2.* expressly says, (a general rule). It is ordered, that no attorney of this or any other court, shall be bail in any action or suit depending in this court.

Attorney intitled to privilege while on roll notwithstanding Rule of *Mitch. 1654.*

No man can be attorney for both parties though by their consent, on pain of being struck off the roll. *MS. Case.*

Attorney



## Court of Common Pleas.

9

Attorney struck off roll at his own request, may be restored to his privilege on motion; but shall not avail himself thereof in any suit then pending. *Barnes 4to Edit. 42.*

Attornies liable to pay costs for blunders in proceedings; and county attornies answerable for the mistakes of their agents. *Barnes 4to Edit. 11, 37, 411.*

If attorney dies pending suit, and the party hath notice thereof, and does not appoint another, the other attorney is not obliged to delay suit, so as to hinder his client's interest. *Style's Reg. 13.*

If an attorney takes upon him to prosecute or defend a suit without warrant or direction, court will grant an attachment against him. *Rastal, 82.*

The person who enters appearance for defendant shall be considered as attorney in the cause, till notice given of another. *MSS. Cases.*

Attorney undertaking to appear, or subscribing a process, compellable thereto. *Mich. 1654. C. B.*

Attorney cannot be changed by his client, without leave of court or order of judge, on payment of his bill, as taxed by the prothonotary; and the new attorney must, at his peril, take notice of all subsisting rules in the cause. *Barnes 4to Edit. 40. Mich. C. B. 1654.*

Attorney is not to be examined concerning secrets of his client's cause.

Attorney delaying his client's suit, or demanding more than his due, the party aggrieved shall recover costs and treble damages against him, and he shall also be struck off the roll. *Stat. 3 Jac. 1.*

Attorney is justified in detaining writings or money as a security till all his just fees are paid. *MSS. Cases.*

Attorney



## The Modern Practice of the

Attorney may retain monies of executor for business done for testator. *Barnes 4to Edit.* 38.

Attorney's bill, even though paid, may be taxed; and if bill taxed be less by a sixth than the bill delivered, attorney must pay the costs of taxation. *Ibid.*

But this statute does not extend to any bill of fees between one attorney and another, nor to conveyancing business. *Stat. 12 Geo. 2. Barnes 4to Edit.* 41.

After an attorney's death, his bill is not liable to taxation. *Barnes 4to Edit.* 122.

Attorney must deliver his bill subscribed with his own hand one month before action brought for recovery of the same. *Stat. 2 Geo. 2.*

An attorney may take out a commission of bankruptcy for his fees, while his bill under taxation by order of court. *MSS. Cases.*

An attorney should sue by an attachment of privilege, an action on the case lays for his bill of fees. *MSS. Cases.*

Attachment of privilege will lie against a member of either university. *3 Cro. 180. Little R.* 304.

Attornies punishable by motion and attachment, for disobeying rules of court, forging writs or other matter of record, taking money of client for business not done, endeavouring to impose on the court, or for giving directions to sheriff what persons to return on panel, and other mal-practices, against the obvious rules of justice and honesty. But the court will not proceed against them in this manner, if it appears that the matter complained of was rather owing to neglect or accident than design; or if the party injured has other remedy by act of parliament or action at law.

The court will not oblige an attorney to do any matter by motion, unless it is an official duty as an attorney. *MSS. Cases.*

Attornies,

Attornies, if any difference arise between them in ordinary matters of practice, must apply to the prothonotary, and submit to his determination, for the court will not be troubled except in nice points of practice.

*N. B.* Every attorney of this court pays 8 d. each term to the clerk of the warrants.

No attorney being a prisoner, is to commence or prosecute any action, or any other attorney to permit such attorney to use his name on pain of expulsion, except action was commenced before he became a prisoner; he is not, however, disqualified from defending suits. *Stat. 12 Geo. 2. Tarnes 4to Edit. 46, 263.*

Articled clerks have no privilege.

Attorn'es  
clerks.

Clerks must actually serve during the whole term of five years, unless the master dies or leaves off business; and then he may be discharged by rule or order of court, and be bound to another inrolled attorney for the remainder of the time. An affidavit must be made, executed, and filed, of such second contract, by one of the subscribing witnesses. *Stat. 22 Geo. 2.*

Clerks bound to attornies must cause affidavit to be made within three months after the execution of articles of clerkship; the names and places of abode of the parties to be inserted in such affidavit, with the day of the date of the contract, same to be filed with the proper officer in the court where his master is admitted, in a book to be kept for this purpose *Stat. 22 Geo. 2.*

See head  
of affidavits.

Clerk who gave a consideration, if discharged from his master before expiration of his time, may have a proportionate moiety returned, on applying to the court by motion, to have the matter referred to the prothonotary, to whom all differences between master and clerk are referred by court; on whose certificate of the sum proper to be refunded, court will order the attorney to pay same. *MSS. Cases.*

Clerk,

## The Modern Practice of the

Clerk, before admitted, must by self or his master, make affidavit, that he has actually and really served and been employed by such attorney or attornies to whom bound, or his or their agent or agents, during the said whole term of five years. *Stat. 22 Geo. 2.*

Clerks whose masters died before the expiration of the five years, and before 25th March 1749, and who have served the remainder of the term to an attorney of one of his Majesty's courts, though under no article or contract in writing, may be admitted attornies. *Ibid.*

Clerk shewing that he has served five years to a solicitor in Chancery, may be admitted an attorney without fee or stamp. *Stat. 23 Geo. 2.*

Clerk serving a prothonotary or secondary of either court five years, may be admitted an attorney. *Stat. 2 Geo. 2.*

A clerk to an attorney who practises also as a scrivener, if by the tenor of his contract, to be instructed in the art of a scrivener only, cannot be admitted an attorney. *Stat. 2 Geo. 2. Barnes 4to Edit. 39.*

Method of  
admission.

Having made an affidavit of service, as directed by statute, before a judge or any officer of the court authorized to take same, carry the part of your articles signed by your master, with his certificate of your faithful service indorsed thereon, (if he does not accompany you himself), to one of the judges of the court at his chambers, who examines you with respect to your qualifications; and if approved, gives his *fiat* for admission. The deputy clerk of the warrants, must attend with you at the judge's chambers to produce the original affidavit of the due execution of the articles. On obtaining judge's *fiat*, give same to the deputy clerk of the warrants, who will ingross your admission on a treble 40 shillings stamped piece of parchment: You then attend at *Westminster Hall*, some day



his term, to be sworn, and have your admission signed by the judge who examines you; the clerk of the warrants will then enter your name on the roll.—The whole expence is about seven guineas.

The T E R M S.

*Michaelmas Term* contains three weeks and two days, and hath four returns.

It begins on the 6th *November*, if not *Sunday*, otherwise on the 7th, and ends on the 28th *November*, if not *Sunday*, then on the 29th.

Returns by original.

Returns by attachment, *Michaelmas*  
bill, &c. Term.

|   |   |
|---|---|
| 1 On the Morrow of<br><i>All Souls.</i>           | On next after<br>the Morrow of <i>All</i><br><i>Souls.</i>    |
| 2 On the Morrow of<br><i>St. Martin.</i>          | On next after<br>the Morrow of <i>St.</i><br><i>Martin.</i>   |
| 3 In eight days of <i>St.</i><br><i>Martin.</i>   | On next after<br>eight days of <i>St.</i><br><i>Martin.</i>   |
| 4 In fifteen days of <i>St.</i><br><i>Martin.</i> | On next after<br>fifteen days of <i>St.</i><br><i>Martin.</i> |

In this court, *St. Martin's Day*, 11th of *November*, is not considered as a non-juridical day.

C

*Hilary*



# The Modern Practice of the

*Hilary Term* contains three complete weeks, and hath four returns.

It begins the 23d *January*, if not *Sunday*, and then the 24th, and ends 12th *February*, if not *Sunday*, and then the 13th.

Hilary  
Term.

*By original.*

*By attachment, bill, &c.*

- |  |  |
|--|--|
| 1 In eight days of St. <i>Hilary</i> .                           | On next after eight days of St. <i>Hilary</i> .                                  |
| 2 In fifteen days of St. <i>Hilary</i> .                         | On next after fifteen days of St. <i>Hilary</i> .                                |
| 3 On the Morrow of the Purification of the Blessed <i>Mary</i> . | On next after the Morrow of the Purification of the Blessed Virgin <i>Mary</i> . |
| 4 In eight days of the Purification of the Blessed <i>Mary</i> . | On next after eight days of the Purification of the Blessed Virgin <i>Mary</i> . |

Writs must not be made returnable on the 2d day of *February* (the Feast of the Purification of the Blessed *Mary*) in *Hilary Term*, it not being a court day.

*East*

*Easter Term* contains three weeks and six days,  
and hath five returns.

It begins the *Wednesday* fortnight after *Easter*  
Day, and ends on the *Monday* before *Whitsun-*  
*day*.

*By original.*

*By attachment, bill, &c.*

- |   |   |
|---|---|
| 1 In fifteen days of<br><i>Easter</i> .             | On <i>Wednesday</i> next af-<br>ter fifteen days of<br><i>Easter</i> .        |
| 2 In three weeks from<br>the day of <i>Easter</i> . | On            next after<br>three weeks from the<br>day of <i>Easter</i> .    |
| 3 In one month from<br>the day of <i>Easter</i> .   | On            next after<br>one month from the<br>day of <i>Easter</i> .      |
| 4 In five weeks from<br>the day of <i>Easter</i> .  | On            next after<br>five weeks from the<br>day of <i>Easter</i> .     |
| 5 On the Morrow of<br>the Ascension of our<br>Lord. | On <i>Monday</i> next after<br>the Morrow of the<br>Ascension of our<br>Lord. |

Writs must not be made returnable on the  
28th May (*Ascension Day*) in *Easter Term*, it  
not being a court day.

# The Modern Practice of the

*Trinity Term* contains twenty days, and hath four returns.

It begins the *Friday* after *Trinity Sunday*, and ends on the *Wednesday* fortnight after it begins, unless that day happens to be the 24th *June*, and then on the day after.

## By original.

- 1 On the Morrow of the Holy *Trinity*.
- 2 In eight days of the Holy *Trinity*.
- 3 In fifteen days of the Holy *Trinity*.
- 4 In three weeks from the day of the Holy *Trinity*.

## By attachment, bill, &c.

- On *Friday* next after the Morrow of the Holy *Trinity*.
- On next after eight days of the Holy *Trinity*.
- On next after fifteen days of the Holy *Trinity*.
- On *Wednesday* next after three weeks from the day of the Holy *Trinity*.

Writs must not be made returnable on the 24th day of *June* (*Midsummer Day*, or the Feast of St. John the Baptist) in *Trinity Term*, it not being a court day; unless it happens to be the first day of the term.

All writs issuing out of this court, grounded upon original writs out of Chancery, must be made returnable on general return days, as on the Morrow of *All Souls*; but writs of attachment, and writs subsequent thereto, and writs grounded on bills filed against attornies and officers of the court intituled to the privilege thereof, or members of the House of Commons, writs of *habeas*, &c. must be made returnable on a day certain in full term, as on *Wednesday* next after the Morrow of *St. Martin*. But care must be taken that they be not made returnable on any of the following days, which are not judicial days, viz. *The Feast of the Purification*, in *Hilary Term*; *Ascension Day*, in *Easter Term*, and the *Feast of John the Baptist*, if it happens in *Trinity Term*, unless it be the first day of that term.

Practical remarks on returning writs.

An attachment of privilege at the suit of an attorney, must have *fifteen* days between the *teste* and return; and there also must be at least *fifteen* days between the *teste* and return of all original writs returnable in this court, and between the *teste* and return of all ordinary writs sued out and proceeded upon, except where dispensed with by act of parliament in the following cases, viz.

In all actions of debt, and other personal actions, actions of *ejectione firmæ* for lands and tenements after issue joined, and after any judgment had or obtained, there need not be *fifteen* days between the *teste* and return of any writ of *venire facias*, *habeas corpora juratorum*, *distringas juratores*, *feri facias*, or *capias ad satisfaciend'*, and the want thereof cannot be assigned for error; but this does not extend to any writ of *capias ad satisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *capias ad satisfaciend'* against the defendant, to



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make the bail liable. *Stat. 13 Car. 2. Lord*  
*C. J. Gilb. Hist. C. P. 332.*

## A C T I O N S.

In what  
cases will  
lie.

An action will lie for all injuries done to a man's person, reputation or property, and where a person hath several remedies, he may make his election. *Bac. Abr. 1 Inst. 145.*

Within what  
time may be  
brought.

Actions on the *case*, except for slander; *account*, except concerning merchandize between merchant and merchant; *trespass*, *debt*, (except on specialty) *detinue*; *trover*, *replevin*, and *trespass quare clausum fregit*, must be brought within six years after cause of action. *Assault*, *menace*, *battery*, *wounding*, and *imprisonment*, within four years; and *slander* within two years: But infants, women under coverture, persons *non compos mentis*, imprisoned or abroad, may sue within the said time, after full age, discoverture, sane memory, at large, or returned. *Stat. 21 Jac. 1.*

Where may  
be brought.

Actions for matters local must be brought in the proper county; as *debt*, on an escape, *trespass* for spoiling corn, *grass*, &c. unless cause of action arises where the justices of *Nisi Prius* seldom come; but those of a transitory nature may be laid in any county at the discretion of the plaintiff, and are accordingly commonly laid in *London* or *Middlesex*. *R. Mich. 1654. C. B.*

In what cases  
distinct mat-  
ters may be  
laid in the  
same action.

*Debt* on an obligation or *mutuatus*, *debt* and *detinue*, *debt* on lease and for clothes, several wrongs and *trespasses*, several actions on the *case*, where of the same kind: As an action for fraud on the delivery of goods, and on the warranty of same goods, being both on the contract; against a common carrier on the custom of the realm

realm and *trover*, being both on the tort: For entering plaintiff's house, breaking his chests, and carrying away his goods, and for beating his servant, *per quod servitium amisit*, for a general action of trespass and a special action on the case may be joined. Where one has a right to recover in the same kind of action, though he derives his right from different titles, yet being joined in him, he may recover in the same action; but cannot in the same action join a demand in his own right, and that which he hath in right of another; several persons may join in one action where their interest is joint. But debt and account, debt and trespass, action on a tort and contract, *assumpsit*, and *trover* may not be laid in the same action. *Bac. Abr.*

The courts at *Westminster* take cognizance of no action where the *damnum* in declaration is not laid at above forty shillings. Or if a citizen of *London* sues another out of the jurisdiction, and does not recover forty shillings, he not only loses his own, but must also pay defendant's costs. *Stat. 3 James 1.*

In all actions, real, personal, and mixed, the Appearance, plaintiff or defendant may appear by attorney, except where the party stands in contempt, or his presence is necessary. In outlawry (except for treason or felony) the defendant may appear and reverse it by attorney.

Those attainted of treason or felony, recu- Persons dis-  
sants convicted of præmunire, outlawed or ex-abled to sue,  
communicated alien enemies, and persons in  
any of the religious orders of the church of  
*Rome*, cannot sue though they may be sued;  
but executors or administrators, though out-  
lawed, may sue in right of the testator or  
intestate. A married woman cannot sue, or  
be sued without her husband, who is to  
appoint

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appoint an attorney for her, except in *London*, where by custom she may, as a sole trader, or in the spiritual court. *Barnes 4to Edition* 100.

Infants.

Infants may sue by *prochein ami*, or next friend or guardian, not by attorney; but must always defend by guardian. 2 *Cro.* 420.

Where two executors, and one under age, they may sue, but cannot be sued, by attorney. *Ibid.*

Ideots.

An ideot cannot sue, defend, or appear, by attorney, next friend, or guardian, but must appear in person; though a lunatic may appear by guardian if a minor, or by attorney if of full age. *Co. Lit.* 135.

Practical remarks.

There are no pleas to the jurisdiction of the courts at *Westminster*, unless the plaintiff by his declaration shews the cause of action accrued within a county palatine; or if it be between the scholars of *Oxford* and *Cambridge*. *Gillb. H. C. P.* 191.

In all personal actions, appeals, &c. there should be added to the name of the defendant, his estate, degree, mystery, and place of abode. *Stat. 1 H.* 5.

No suits depending in the King's courts are discontinued by the demise of the King. *Ann.*

## A F F I D A V I T S.

N.B. Plaintiff and defendant's true place of abode, and addition, must be set forth in affidavit.

In the C. B.

A. B. plaintiff.  
C. D. defendant.

A. B. of the *Strand*, in the county of *Middlesex*, taylor, the plaintiff in this cause maketh oath, that the above defendant C. D. late of *Essex* is justly and truly indebted to him, this deponent, in the sum of 50 l. for work done, and

# Court of Common Pleas.

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and materials found and provided by this deponent for the said defendant.

A. B.

Sworn, &c.

Sworn at (name the place) the day of 1772, before a commissioner.

For goods sold and delivered by this deponent to the said defendant, (if for one thing only, as horse, &c. mention it). Before a commissioner.

If there are several plaintiffs, one only need make the affidavit, viz. Indebted to him this deponent, and C. D. &c. in the sum of 50l. If for goods sold and delivered.

For goods sold and delivered by him this deponent, and the said C. D. &c. to the said defendant. Where several plaintiffs.

For so much money lent and advanced by this deponent to the said defendant. Money lent and advanced.

For so much money had and received by the said defendant for the use of this deponent. Money had and received.

For so much money of the said deponent's, for the said defendant at his request, paid, laid out, and expended. Money laid out.

For so much money due to this deponent upon the balance of an account stated and settled between this deponent and the said defendant. Stated account.

For meat, drink, washing, and lodging found and provided by this deponent for the said defendant. Things found and provided.

For divers journies performed by this deponent by himself and servants (as the case may be) for the said defendant, at his request, and for horse-hire, and other necessary expences laid out, expended, and paid in and about such journies. For journies, horse-hire, &c.

For



For fees, &c.  
as an attorney.

For fees, work, and labour, money laid out in journies, and attendances of this deponent in and about prosecuting and defending divers suits and actions, and for drawing and ingrossing divers deeds and writings, and money laid out in and about the same for the said defendant.

If by an executor or administrator of an attorney.

Indebted to this deponent as executor (*or executrix*) of the last will and testament (*or as administrator or administratrix*) of all and singular the goods and chattels which were of C. D. Gent. deceased, for fees, &c.

Grazing cattle.

For grazing, feeding, or depasturing the cattle of the said defendant from to last.

Hire of milch cows.

For the milk, use, and produce of milch cows by the said defendant had and received of this deponent, or for hire of milch cows.

For medicines.

For divers medicines and other things, in his business of an apothecary, by this deponent found, provided, administered, and given to the said defendant, or by his order, to (*his wife, child, servant, or lodger, as the case may be*) at his request. Add, if necessary, for good fold, money laid out, journies and attendances &c.

For surgery.

For work and labour, skill and diligence, in and about curing a wound (*as the case is*) of the said defendant, and for divers necessary things used by this deponent in his business of a surgeon, in and about the cure of the said defendant.

On a bond.

For principal and interest due on a bond entered into by the said C. D. (*and others, as the case is, jointly and severally, if so*) unto this deponent in the penal sum of l. &c.

Note of hand.

That the above defendant is justly and truly indebted to this deponent, in the sum of 50 *on a promissory note, under the hand of the*

and defendant, payable to this deponent or order on demand, (*or as the case may be*).

That the said defendant is justly and truly indebted unto him this deponent in the sum of 100l. as indorsee of one C. D. of a promissory note drawn by the said defendant, and payable to the said C. D. or order, &c. and by him indorsed to this deponent.

If by a second indorsee against drawer, or indorsee against first, second, or third indorser, vary it *mutatis mutandis*.

That defendant is justly and truly indebted unto this deponent in the sum of 100l. upon an exchange of a bill of exchange drawn by the J. G. upon the said defendant, payable to this deponent, or order, on a day now past, and accepted by the said defendant.

That defendant is justly and truly indebted unto this deponent in the sum of 100l. as indorsee of one K. L. of a bill of exchange drawn by one J. F. upon the said defendant, payable to the said K. L. at a day now past, and accepted by the said defendant.

If against the first, second, or third indorser, vary same *mutatis mutandis*.

Indebted unto this deponent for a year's rent of a house situate, &c. in the sum of 20l. due to this deponent at Lady-day (*or as the case may be*) last past.

For the use and occupation of a house and held by lease, &c. in 20l. from last.

Indebted unto this deponent in the sum of 20l. which the said defendant promised to pay to this deponent, upon an exchange lately made of a certain mare belonging to this deponent, for a certain horse of the said defendant's.

In the C. B.

A. B. &c. (*being one of the people called Quakers*) solemnly affirms, that, &c. is indebted to

to

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to this affirmant, &c. (as the cause of office may be, always saying affirmant instead of deponent). Affirmed at, &c. (as before).

Form of affidavit to obtain special ac etiam.

In the C. B.

*A. B.* of, &c. maketh oath, That on Thursday the 24th day of June last past, he, this deponent, going to view whether the tithe hay of the lands of *C. D.* late of, &c. were ready to be set forth, the said *C. D.* did then in the said field, without any reasonable cause, in a violent manner assault, beat and throw this deponent on the ground; this deponent making no opposition or resistance against the said *C. D.* but this deponent being rescued by some persons present from the said *C. D.* the said *C. D.* did again, as soon as he got loose from the persons that rescued this deponent, a second time assault, throw down, beat, and kick this deponent several times about the head and body, so that blood gushed out of his ears, which occasioned this deponent the loss of his speech and hearing for some time, so as to render him incapable of performing his duty in the aforesaid parish, he being minister of the same: And this deponent further saith, That he the said *C. D.* hath often declared, that it was no crime for any man to kill or destroy this deponent.

Sworn, &c.

*A. B.*

This affidavit hath every circumstance of aggravation that can be conceived under the nature of the case. It must be sworn before a judge of the court you intend to commence your suit in. When sworn, must be left with his clerk for an order for bail.

You call on judge's clerk to know if order for bail made on affidavit; if done, it is in manner following indorsed on such affidavit, viz.

Let a *capias* (or as the case may be) be issued forth against C. D. with an *ac etiam* of 50l. at the suit of A. B. upon this affidavit.

Dated, &c.

William De Grey.

You make your *ac etiam* accordingly; as see under head of writs. Carry affidavit and writ to the proper officer, who signs same, as in a common case.

Judges are unwilling to deprive a person of liberty; but in the following cases it hath been usual for them to make an order for bail. In what cases it is usual for judges to make an order for bail.

In battery, conspiracy, or false imprisonment, no bail, of course, without special motion, or order of judge. Rule, C. B. Mich. 1654. *Gilb. C. P. 37.*

If a judge orders special bail, on affidavit made by plaintiff for that purpose; defendant has a right to apply to court, or judge on summons, to get discharged therefrom, if not well founded. *Barnes 4to Edit. 61.*

On action for *crim. con.* with plaintiff's wife, on affidavit of fact, a judge will grant an order to hold defendant to bail, for such sum as he shall think reasonable, from the circumstances of the case and parties. *Ibid.*

In the C. B.

A. B. plaintiff,

C. D. defendant.

Affidavit of service of

J. C. clerk to John Alexander, of the city of London, Gent. maketh oath, That he, this defendant, did, on the 4th day of November last, personally serve the defendant C. D. with the writ or process hereunto annexed, by shewing him such writ or process, and at the same time delivering to him a true copy thereof, on which copy was an *English* notice in writing of the intent and meaning of such service, as by the statute in that case made is required. *process must be full and explicit. Barnes 4to Edit. 405.*

J. C.

Sworn

D



## The Modern Practice of the

Sworn the 10th  
Dec. 1771,  
before }

This affidavit is made when plaintiff enters a common appearance for defendant, according to the statute.

In the C. B.

A. B. plaintiff,  
C. D. defendant.

Affidavit of  
taking bail  
in the coun-  
try by com-  
mission.

J. C. of Reading, in the county of Berks, Gent. maketh oath, That the recognizance of bail or bail-piece hereunto annexed, was duly acknowledged by A. B. and C. D. the bail, with their additions, before E. F. the commissioner, who took the same in this deponent's presence, the day of last past.

Sworn, &c.

J. C.

In the C. B.

Affidavit of  
bail in per-  
fecting  
themselves.

A. B. of, &c. and C. B. of, &c. bail for the defendant in this cause, severally maketh oath, that they, these deponents, are housekeepers in Reading aforesaid; and that they are each of them worth the sum of (twice the debt sworn to) and upwards, exclusive of all debts or demands due from them to any person or persons whatsoever.

Sworn, &c.

A. B. C. B.

In the C. B.

To change  
the venue.

C. D. late of, &c. the defendant in this cause, maketh oath, That the cause of action mentioned in the declaration delivered in this cause (if any such there be) did arise in the county of W. and not in the city of L. nor elsewhere out of the said county of W.

Sworn, &c.

C. D.

In

In the C. B.

A. B. plaintiff,

C. D. defendant.

C. D. late of, &c. the defendant in this cause, maketh oath, That the substance and matter of fact in the plea hereto annexed is true.

Affidavit of the truth of a dilatory plea, or plea in abate-

Sworn, &c.

C. D. ment.

If plea be for a filacer or other officer of the court, there need not be affidavit. A copy of grant of the office is to be affixed to his plea.

1 Inst. c. 8. 270.—7th Edit.

In the C. B.

A. B.

against

J. W.

J. W. late of, &c. the defendant in this cause maketh oath, That S. B. formerly a servant to this deponent, (or as the case may be) is a material witness for this deponent in this cause; and that he, this deponent, cannot safely proceed to trial in this cause without his testimony: And this deponent further saith, that the said S. B. now is, and for about ten months last past, hath been in the county of L. as this deponent is informed, and verily believes; but in what part of L. he is, this deponent does not know, nor can discover, altho' he hath done his utmost endeavour to find out where he is, in order to have him served with a *subpœna* to testify in this cause; but this deponent saith, that he is informed by J. B. (brother of the said S. B.) that he the said S. B. will be in London in six weeks time; and this deponent verily believes that such information is true, and that he will be in London by that time.

Affidavit of want of a material witness in order to put off a trial.

Sworn, &c.

J. W.

## The Modern Practice of the

In the C. B.

C. R. plaintiff,  
against

A. B. defendant.

Affidavit of  
defendant  
and attor-  
ney's clerk  
for costs for  
plaintiff's  
not going to  
trial accord-  
ing to notice  
in a town  
cause.

A. B. late of, &c. the defendant in this cause, and C. D. clerk to Mr. G. the said defendant's attorney, severally maketh oath; and first, the said deponent A. B. for himself, saith, that the plaintiff in this cause having given notice of trial for *Thursday* last at *Guildhall, London*, he, this deponent, prepared for his defence, and caused counsel to be see'd, and witnesses to be served with *subpœna's* to give evidence for this defendant upon the said trial: And this deponent further saith, the said plaintiff, on the same day, but not sooner, countermanded his said notice of trial: And the other deponent C. D. for himself, saith, that he did this day serve on Mr. T. the plaintiff's attorney in this cause, a notice in writing, by leaving same at his house with his servant-maid, purporting, that this honourable court would be moved on *Monday* next, or so soon after as counsel could be heard, that the plaintiff may pay the defendant his costs for not proceeding to the trial of this cause, pursuant to the notice given by him for that purpose.

Sworn, &amp;c.

A. B.  
C. D.

In the C. B.

A. B.  
against  
C. D.

Affidavit of  
defendant  
and attorney  
for costs for  
plaintiff's  
not proceed-  
ing to trial  
according to  
notice in a  
country  
cause.

C. D. late of, &c. the defendant in this cause, and J. E. of, &c. attorney for the said defendant, severally make oath as follows; and first, the said C. D. for himself, saith, That pursuant to a notice of trial given by the plaintiff in this cause, for the last assizes held at R. in the county of B. (or as the case may be) he, this deponent, and the said J. E. together with (number) witnesses

witnesses which this deponent believes were material, and necessary in this cause, to wit, (*here set forth the witnesses names, places of abode, and additions*), attended at the said assizes; and that all the said witnesses took a journey from their respective habitations to R. aforesaid, being upwards of (*number of*) miles; but these deponents severally say, that the said plaintiff did not proceed to trial pursuant to the said notice; neither have they, or either of them, directly or indirectly, received any countermand of the same; and that these deponents, and the said witnesses, were on that account from home (*number of*) days: And the said C. D. for himself, further says, that he hath paid for horse-hire, and other necessary expences of himself, his said attorney, and the said witnesses on their said journies at the said assizes, the sum of ( *l.* ). And the other deponent, J. E. for himself saith, that he paid ( *l.* ) fees of court, council, &c. (*as the case is* ).

Sworn, &c.

C. D.

J. E.

If countermand be received too late, (*then add to former affidavit*) that neither they, or either of them, these deponents, directly or indirectly, received any countermand of trial of the said cause, till the (*here insert day and hour you received countermand*).

It must be by motion for costs in this court. *Inst. C. P.* 100.

In the C. B.

A. B.

against

C. D.

C. D. late of, &c. the defendant in this cause, Affidavit for and J. E. of, &c. his attorney, severally make oath as follows; and first, the said C. D. for himself, saith, That pursuant to notice of trial given in this cause, for the last assizes held at R. in the county of B. (*or as the case may be*) he,

increase of  
costs in a  
country  
cause.



## The Modern Practice of the

this deponent, and the said J. E. together with (number of) witnesses, which this deponent believes were material and necessary in this cause, to wit, (*here name witnesses places of abode and additions*) attended at the said assizes; and that all the said witnesses took a journey from their respective habitations to R. aforesaid, being upwards of (number of) miles; and that this cause was tried on (*here insert day of the week, month, and between the hours of the day same was tried*): And that these deponents, and the said witnesses, were, on that account, from home (number of) days; and this deponent hath expended for horse hire and other necessary expences of himself, his said attorney, and the said witnesses, on their said journies at the said assizes, the sum of ( 1.) And this deponent, J. E. for himself, saith, that he paid ( 1.) for court fees, or to council, &c. (*as the case is*).

Sworn, &amp;c.

C. D.

J. E.

In the C. B.

A.  
against  
B.

Affidavit of  
notice of  
render of  
bail, in order  
to discharge  
same.

J. B. clerk to J. A. of, &c. gentleman, attorney for defendant's bail in this cause, maketh oath, That he, this deponent, did on Thursday the                      day of                      last, serve Mr. P. (*his man or maid servant, as the case may be*) who acts as attorney or agent for the plaintiff in this cause, with a notice in writing, purporting, that the above defendant rendered himself (*or was rendered by his bail, as the case may be*) on the                      day of                      last, before (*the judge before whom render was made*) in discharge of his bail in this cause.

Sworn, &amp;c.

J. B.

In

*A.*  
against  
*B.*

*J. B.* clerk to *J. A.* of, &c. maketh oath, Affidavit of  
That he, this deponent, did on \_\_\_\_\_ day of \_\_\_\_\_ notice of  
last, serve Mr. *P.* the plaintiff's attor- bail where  
ney in this cause, with a notice in writing, pur- not excepted  
porting, that the within-named bail were put in order to file  
for the above defendant in this cause, on the same, to be  
day of \_\_\_\_\_ before *(the judge bail* indorsed on  
*was put in with).* back of bail-  
*Sworn, &c.* piece.  
*J. B.*

G. H. of, &c. gentleman, maketh oath, That A. B. an infant, the petitioner in the petition hereunto annexed named, on this present day of \_\_\_\_\_ did duly sign the petition hereunto annexed, in his this deponent's presence; and this deponent further saith, at the same time he was present, and did see E. F. the person mentioned in the said petition, duly sign the acceptance or agreement there underwritten, in order to his being appointed guardian to the said A. B.

**G. H.**

*A. B. and C. D. assignees  
of E. F. a bankrupt,  
and  
G. H. Defendant.* } Plaintiff.

*E. F.* of, &c. the bankrupt, maketh oath, Affidavit by  
That the above defendant is justly and truly in- bankrupt on  
debted unto the said plaintiffs *A. B.* and *C. D.* behalf of his  
as assignees of the estate and effects of him this assignees.  
Deponent, in the sum of ( ) being the ba-  
lance of an account for goods sold and delivered

(or

## The Modern Practice of the

(or as the case is) to the said defendant, by this deponent, before he became a bankrupt.

Sworn, &c.

E. F.

In the C. B.

Affidavit of  
rent due  
from tenant,  
where no  
distress, in  
order to re-  
cover in  
ejectment.

A. B. of, &c. the plaintiff in this cause, maketh oath, That the above defendant justly owes to him this deponent, the sum of ( 1.) for half a year's rent (or as the case is) of one messuage, situate now in the possession of the said defendant, as tenant thereof, (or as the case is) due to this deponent at Lady-day last, and that no sufficient distress can be had or found on the premises to satisfy the said rent; and further, that he, this deponent, hath right and power by law to re-enter on the said messuage, upon non-payment of the rent aforesaid.

Sworn, &c.

A. B.

In the C. B.

Affidavit of a  
tenant's re-  
fusing to de-  
fend an  
ejectment,  
in order to  
have the  
landlord ad-  
mitted de-  
fendant.

G. lessee of J. B. against N. N.  
J. D. of, &c. maketh oath, That he, this deponent, did this day of by the direction of N. B. landlord of the premises in question in this cause, apply to G. B. tenant in possession of the said premises, to know whether he the said G. B. would appear and become defendant in this cause, or would permit the said N. B. to defend his title to the premises in the name of the said G. B. and this deponent at the same time shewed, and offered to deliver unto the said G. B. a note under-signed by the said N. B. whereby the said N. B. promised to defend and keep the said G. B. harmless from all costs and charges in this cause; but the said G. B. then told this deponent, that he would not appear and become defendant in this cause, or anywise concern himself therein.

Sworn, &c.

J. D.  
In

In the C. B. *A. B.* plaintiff,  
and  
*C. D.* defendant.

*A. B.* of, &c. the plaintiff in this cause, maketh oath, That he, this deponent, did on *Thursday* the \_\_\_\_\_ day of \_\_\_\_\_ last, being before the effoin day of this present *Hilary* term, leave a notice in writing with *Mr. C. B.* attorney for the defendant in this cause, of a mistake in the declaration delivered in this cause, in order to its amendment, and that the defendant might be apprised and have notice of such amendment, and plead accordingly.

*Affidavit of notice of a mistake to amend a declaration.*

*Sworn, &c.* *A. B.*

In the C. B. *A. B.* plaintiff,  
and  
*C. D.* defendant.

*E. F.* of, &c. attorney for the plaintiff in this cause, maketh oath, That he, this deponent, did on *Tuesday* the \_\_\_\_\_ day of \_\_\_\_\_ last, three days (or as the case is) before the commission day for the assizes held at \_\_\_\_\_ county, countermand the notice of trial given in this cause, by serving the defendant with a notice in writing, whereby he, this deponent, made known to the said defendant, that the said plaintiff would not proceed to trial therein at the said assizes.

*Affidavit of countermand of notice of trial.*

*Sworn, &c.* *E. F.*

In the C. B. *A. B.* plaintiff,  
*C. D.* defendant.

*C. D.* late of, &c. the defendant in this cause, maketh oath, That the writ of inquiry lately executed by the plaintiff in this cause, at (*place where*) was executed without any notice given to him, this deponent of the time and place appointed for the executing thereof.

*Affidavit that no notice was given of executing a writ of inquiry in order to set it aside.*

*Sworn, &c.* *C. D.*  
This



This affidavit may be made jointly by defendant and his attorney.

to be made

In the C. B.

A. B. plaintiff,

and

C. D. defendant.

Affidavit of  
defendant's  
attorney in  
support of  
last affidavit.

E. F. of, &c. attorney for the defendant in this cause, maketh oath, That the writ of inquiry executed by the plaintiff in this cause, on *Thursday* the \_\_\_\_\_ day of \_\_\_\_\_ last, was executed without notice given thereof to him, this deponent, or any other person on his account.

Sworn, &c.

E. F.

In the C. B.

A. B. plaintiff,

and

C. D. defendant.

Affidavit of  
serving rule,  
and demand-  
ing costs, in  
order to ob-  
tain an at-  
tachment by  
defendant.

C. D. late of, &c. the defendant in this cause, maketh oath, That he, this deponent, on *Thursday* the \_\_\_\_\_ day of \_\_\_\_\_ last, personally served A. B. the plaintiff in this cause, with a true copy of the rule and *allocatur* hereunto annexed; and at the same time shewed him the original rule and *allocatur*, and demanded of him the money mentioned in the same; but the said plaintiff refused or neglected (*as the case may be*) to pay the same.

Sworn, &c.

C. D.

If defendant deposes any one by power of attorney, then as follows:

In the C. B.

By defen-  
dant's attor-  
ney.

E. F. of, &c. maketh oath, That he (*as above*), &c. and also shewed him a letter of attorney from the said defendant, authorizing him, this deponent, to receive the same; but the said plaintiff refused (*or neglected, as the case may be*) to pay the same.

Sworn, &c.

E. F.

In

In the C. B.

A. B. plaintiff,  
and

C. D. defendant.

C. D. late of, &c. the defendant in this cause, maketh oath, That he, this deponent, had no notice of trial in this cause, for the last assizes held for the county of N. but that the same was tried without any notice given thereof to him this deponent.

Affidavit to support motion in arrest of judgment, for a new trial.

Sworn, &c.

C. D.

In the C. B.

A. B. plaintiff,  
and

C. D. defendant.

C. D. late of, &c. the defendant in this cause, maketh oath, That the record whereon this cause was tried at the last assizes for N. differs from the deed pleaded on the trial of this cause; for in the record thereof, the deed is mentioned to bear date, &c. and to be made between, &c. and the deed is dated on, &c. and made between, &c. (or as the case is.)

Affidavit when record differs from deed pleaded.

Sworn, &c.

C. D.

In the C. B.

A. B. plaintiff,  
and

C. D. defendant.

E. F. of, &c. attorney for the defendant in this cause, maketh oath, That the counsel for the plaintiff in this cause, pleaded, &c. (the matter pleaded) when they should have pleaded (the matter that ought to have been pleaded) or before the defendant pleaded his plea of not guilty, contrary to the custom and practice of of this court.

When there is a defect in pleading.

Sworn, &c.

E. F.

In

In the C. B.

A. B. plaintiff,

and

C. D. defendant

**Affidavit for judgment (as in case of a nonsuit) for not proceeding to trial after issue joined.** A. B. of, &c. gentleman, attorney for the defendant in this cause, maketh oath, That if sue was joined in this cause, as of *(the term)* last; and that the plaintiff did not proceed to trial at the then next assizes, &c. to be held for the county of N. and that he, this deponent, on *Thursday* the day of

inst. gave notice in writing to Mr. R. R. attorney for the plaintiff in this cause, that this honourable court would be moved to-morrow, or so soon after as counsel could be heard for judgment, as in case of a nonsuit, pursuant to the statute in that case made and provided.

24 Geo. 2.

Sworn, &amp;c.

A. B.

In the C. B.

*Holdfast* on the demise of A. B.

against

*Letgoe.*

**Affidavit of service of declaration in ejectment.**

B. R. of *Grocers Hall, London*, gent. maketh oath, that he this deponent did on the day of last, serve C. D. the tenant in possession of the premises in question in this cause, with the declaration hereunto annexed, and the notice thereunder written by delivering unto him the said C. D. a true copy of the said declaration and notice, and at the same time reading over to him the said notice, and acquainting him with the contents or purport of the said declaration and notice.

Sworn, &amp;c.

B. R.

In the C. B.

Between

A. B. plaintiff,

and

C. D. defendant.

**Form of the affidavit to enter up**

A. B. of, &c. and G. H. of, &c. severally make oath; and first, the said A. B. for him-



self saith, that the sum of 1. secured to be paid judgment on  
unto him this deponent, in and by one bond bond and  
or obligation in the penal sum of 1. bearing warrant of  
date the day of in the year of our Lord above a  
entered into by the said defendant C. D. year's stand-  
ing.  
unto him this deponent (and for which this de-  
ponent hath a warrant of attorney executed by  
the said defendant) bearing even date with the  
said bond to confess judgment thereon in this  
honourable court, is still due and owing unto  
him this deponent: and this deponent further  
saith, that the aforesaid C. D. is now alive, as  
this deponent verily believes, he this deponent  
having seen and discoursed with the said defend-  
ant on the day of instant: and the  
said other deponent G. H. for himself saith, that  
he was present and did see the said defendant  
C. D. duly execute the said bond and warrant  
of attorney above mentioned: and further saith,  
that the name of G. H. subscribed as a witness  
to the same bond and warrant of attorney afore-  
said, is of this deponent's own proper handwri-  
ting.

Sworn, &c.

A. B.

G. H.

On this affidavit judge makes an order for  
entering up judgment, for which you pay his  
clerk 2 s. carry order to the prothonotary's of-  
fice, who signs judgment on old bond and  
warrant, and files order as his voucher for so  
doing.

In the C. B.

A. B. clerk to R. R. of, &c. gent. maketh Affidavit of  
oath, that he this deponent did see R. R. one the execu-  
of the attorney's of his majesty's court of Com- tion of arti-  
mon Pleas, R. T. of, &c. and P. R. (the clerk) cles of clerk-  
severally sign, seal, and as their several acts ship.  
and deeds, in due form of law deliver certain  
articles of agreement indented, bearing date the



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day of      last, and made between the said *R. T.* and *P. R.* of the one part; and the said *R. R.* of the other part; whereby the said *R. T.* and *P. R.* agreed, that the said *P. R.* should serve the said *R. R.* as his clerk in the practice of an attorney and solicitor for the term of five years, to be computed from the day of the date of the said articles: and this deponent further saith, that the names *R. T. P. R.* and *R. R.* set and subscribed opposite to the several seals affixed to the said articles as the parties executing the same, are of the several and respective proper handwritings of the said *R. T. P. R.* and *R. R.* and that the name *W. L.* thereto set, as one of the subscribing witnesses to the said articles, is the proper handwriting of the said *W. L.* and that the name *A. B.* thereunto set as the other subscribing witness, is the proper handwriting of this deponent.

*Sworn, &c.*

*A. B.*

Note, This affidavit must be filed and entered with the clerk of the warrants, within three months after date of articles, as directed by statute 22 Geo. 2. his fee for filing same is 2 s. 6 d. and the book may be searched at any time in office-hours.

In the *C. B.*

Affidavit of  
delivery of  
declaration  
against a  
prisoner.

*E. F.* of, &c. maketh oath, that this deponent did on *Thursday* the      day of      last deliver unto the keeper, gaoler, or turnkey of the gaol of      a true copy of a declaration hereunto annexed; and the said keeper, gaoler, or turnkey then acknowledged the said defendant to be a prisoner in the said gaol: and this deponent saith, that the said defendant was arrested or charged in custody by virtue of a *capias*, attachment of privilege, (or as the case may be) appearing to this deponent to be issued out of this

Court of Common Pleas.

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this honourable court, and returnable before the delivery of the said declaration.

Sworn, &c.

E. F.

In the C. B.

A. B. plaintiff,  
and

C. D. defendant.

A. B. of, &c. taylor, the plaintiff in this cause, maketh oath that he this deponent, having casually lost a horse, being his property, of the value of 20 l. the said defendant C. D. late of, &c. afterwards became, and now is possessed of the said horse, which he hath converted and disposed of to his own use, as this deponent hath been informed, and verily believes.

*Affidavit in  
trover to  
hold defen-  
dant to bail.*

Sworn, &c.

A. B.

In the C. B.

A. B.  
against  
C. D.

A. B. of, &c. the plaintiff in this cause, and T. C. attorney to the said plaintiff, severally make oath; and first the said A. B. the plaintiff, for himself saith, that he paid and expended for the entertainment of his witnesses during their attendance for days, to give evidence in this cause, the sum of and this deponent further saith, that he paid the several witnesses following for their necessary attendance during that time, that is to say, (*here insert witnesses names and sums paid*) and which said several persons were, as this deponent also apprehends and was advised, material witnesses for determining this cause: and the other deponent T. C. for himself, saith, that he this deponent made out and caused to be delivered

*Affidavit to  
authenticate  
queries made  
by protho-  
notary on a  
bill of costs  
taxed.*

*subpœna* tickets in this cause, which were duly served on (*here insert the names of the persons on whom they were served*) and that in pursuance thereof, they all duly attended at (*the place where cause tried*) for days, in order

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der to give evidence for plaintiff in this cause, until the said cause was referred to arbitration by order of court: and this deponent *T. C.* further saith, that he, this deponent, attended at *Guildhall* for        days, during all which time the said cause was in the paper of causes for the trial thereof, and that the same did not come on for trial till        when the same was referred to arbitration as aforesaid.

Sworn, &c.

*A. B.*

*T. C.*

This affidavit must be varied according to the nature of the case.

In the *C. B.*

Form of an  
affidavit of  
the due cap-  
tion of a  
fine.

*A. B.* of        in the county of        one of the attornies of his Majesty's court of Common Pleas, and one of the commissioners named in the writ of *dedimus p. testatem* for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conusors named in the said fine; and that the same was duly signed and acknowledged by them before this deponent, and *I. K.* gentleman, the other commissioner named in the said writ; and that the said *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and also this deponent and the said *I. K.* were, at the time of taking and acknowledging the said fine, all of full age and competent understanding: That the said *E.* and *H.* were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the said fine, and that the said conusors and every of them knew the same to be a fine, to pass his, her, or their estate and estates.

*A. B.*

Sworn



# Court of Common Pleas.

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Sworn at *in the*  
*county of* *the day of*  
*in the year of our*  
*Lord* *before me L.*  
*M. one of, &c.*

In the C. B.

*A. B.* of *in the county of* *Form of affi-*  
one of the attornies of the court of Common *davit when*  
Pleas, maketh oath and faith, that he knows *not made by*  
*C. D.* and *E.* his wife, and *F. G.* and *H.* his *a commis-*  
wife, the conufors named in the fine hereunto *sioner.*  
annexed; and that the said fine was duly sign-  
ed and acknowledged by them in this deponent's  
prefence; and that they the said *C. D.* and *E.*  
his wife, and *F. G.* and *H.* his wife, and also  
*L. K.* and *L. M.* gentlemen, the commissioners  
taking the same fine, were, at the time of taking  
thereof, all of full age and competent under-  
standing: That the said *E.* and *H.* were solely  
and separately examined apart from their hus-  
bands, and freely and voluntarily consented to  
and acknowledged the said fine; and that the  
said conufors and *every* of them knew the same  
to be a fine to pass his, her, or their estate and  
estates.

*Sworn at, &c.*

*A. B.*

If there be only one conufor and his wife,  
say, and *each* of them.

In the C. B.

*A. B.*  
against  
*C. D.*

*E. F.* of, &c. clerk to Mr. *R. R.* attorney *Affidavit of*  
for the defendant in this cause, maketh oath, *service of no-*  
that he, this deponent, did on *Tuesday* the 5th *tice to justs;*  
day of this instant *June*, serve a copy of the no- *fy bail.*  
tice hereunto annexed on Mr. *P. P.* who acts,  
as this deponent is informed and believes, as  
attorney or agent for the plaintiff in this cause,  
by delivering a true copy thereof to the servant



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 maid of the said Mr. P. P. at his house in Gray's  
*Inn Lane.*

Sworn, &c.

E. F.

In the C. B.

A. B. plaintiff,  
 and

C. D. defendant.

Affidavit to  
 ground at-  
 tachment  
 against she-  
 riff for not  
 returning  
 writ, or  
 bringing in  
 the body.

E. F. of, &c. clerk to Mr. R. R. attorney  
 for the plaintiff in this cause, maketh oath, that  
 he, this deponent, on the  
 day of *June* last, served the rule to return the  
 writ of *capias*, &c. hereunto annexed, by deli-  
 vering a true copy thereof unto Mr. *Benson*,  
 (who acts as or for the under-sheriff of the coun-  
 ty of *Middlesex*); and at the same time shewed  
 him the said annexed rule: And this deponent  
 further saith, that on the                      day of  
 last, he, this deponent, searched at the *Custos*  
*Brevium's* office for the return of the *capias*, &c.  
 issued in this cause, in the said rule mentioned,  
 and thereupon found that the same was not  
 filed: And this deponent further saith, that on  
 the                      day of                      he, this deponent, served  
 the said Mr. *Benson* with a true copy of the  
 rule to bring in the body of the said defendant  
 in this cause also hereunto annexed, and hath  
 since duly searched the special bail-book of the  
 filacer of                      and thereupon found that  
 no special bail was put in, or had justified them-  
 selves in this cause.

Sworn, &c.

E. F.

In the C. B.

A. B. plaintiff,  
 against

C. D. defendant.

Affidavit to  
 obtain order  
 where plain-  
 tiff's attor-  
 ney doth not  
 attend sum-  
 mons.

E. F. of, &c. clerk to Mr. P. P. attorney  
 for the defendant in this cause, maketh oath,  
 that he, this deponent, on the 13th, 14th, and  
 15th days of this instant *June*, severally served  
 the three several summons's hereunto annexed,  
 by severally delivering true copies thereof unto  
 Mr.

Mr. R. R. the attorney for the plaintiff in this cause, and at the same time shewing him the said three annexed summons's : And this deponent further saith, that on the three several days and times therein mentioned, he hath accordingly duly attended thereon, but that the said Mr. R. R. or his agent, did not on either of the said three several days or times aforesaid attend thereon.

*Sworn, &c.*

*E. F.*

In the C. B.

*A. B.*  
against  
*C. D.*

*E. F.* of, &c. clerk to Mr. R. R. attorney for the plaintiff in this cause, maketh oath, that Mr. P. P. attorney for the defendant in this cause, having served this deponent's master with notice of justifying bail in this cause, he, this deponent, by the order and directions of his said master, inquired into the sufficiency of the bail intended to be justified for the said defendant; and saith, that *I. K.* one of the said bail, hath been a bankrupt within these twelve months last past, and hath not yet obtained his certificate, as this deponent hath been informed, and verily believes.

*Sworn, &c.*

*E. F.*

All the above affidavits are to be wrote on a sheet of treble sixpenny stamped paper, and may be sworn before a judge, commissioner, or proper officer of the court authorized to take such affidavits, viz. in *London and Middlesex*, by the proper filacer; pay swearing 1 s.; if in court, 1 s. 6 d.

If cause of action amounts to 10 l. and upwards, affidavit must be made and filed. *Stat. marks.*

12 Geo. 1. 5 Geo. 2. 21 Geo. 2.

Note, The *Stat. 12 Geo. 1.* requiring affidavit of 10 l. due, does not *supersede* the 11

1

*W. 3.*

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*W. 3.* which requires affidavit of 20 l. in counties palatine. *Barnes 4to Edit. 89.*

Affidavit to hold to bail must be positive in all cases, even tho' made by a third person, unless in the case of an executor or assignee of a bankrupt, where the bankrupt refuses to make such affidavit. *Barnes 4to Edit. 87, 91.*

An old affidavit not sufficient to hold to bail, the statute requiring an oath of a subsisting debt at the time of suing out process. *12 Geo. 1.*

Affidavit that defendants are indebted *jointly*, not sufficient to hold them to bail *severally*. *Barnes 4to Edit. 71.*

Affidavits to hold to bail, and of service of process, where common appearance is required, may be sworn before the plaintiff's attorney, being a commissioner. *Rule, C. B. Easter 13 Geo. 2.*

Affidavit of a person convicted of felony, tho' insufficient to hold to bail, cannot be supplied by a subsequent *affidavit*. *Barnes 4to Edit. 79.*

Affidavits taken by commissioners in the country to be filed before read in court, *Rule, C. B. Trin. 2 W. & M.*

The secondaries cannot file affidavits taken before any person that is not commissioned. *Ibid.*

Affidavits that are intended to be used before the prothonotaries must be filed. *Rule, C. B. Hilary 11 Geo. 2.*

## GENERAL DIRECTIONS

*for commencing process in this court.*

If the matter doth not require bail, you may make out a *capias* in trespass, on which you may declare in any county you think proper, unless such action is in its nature *local*.

No *capias ad respondendum*, with an *ac etiam*, can be made out against an heir, executor, or administrator,



administrator, nor in any case whatsoever, where, by the rules of the court, special bail ought not to be taken, nor upon any bond or penal bill where the principal and interest is not 10 l. but the court, or a judge, at chambers, may and do, on good cause shewn by affidavit, make an order for bail in an action of assault and battery, or for words, or *scandalum magnatum*, or for any personal wrong. Rule, *Mich.* 1654. *Stat.* 12 *Geo.* 1.

Four defendants may be inserted in each writ; but you can have but one plaintiff, unless it is a joint action.

The writ must express the defendant or defendants by their name or names of baptism and surname; and if more persons of the same name, a proper distinction should be made, as younger, &c. and by the statute of additions, must set forth defendant's degree, calling, and place, or county where he last resided. *Stat.* 1 *Hen.* 5.

The *teste* of this writ, if in *term*, is the first day of term; in *vacation*, the last day of the preceding term.

If this writ is bailable, you add an *ac etiam* according to the nature of the case; if to be served, you insert a notice to the defendant at the bottom thereof.

If the defendant cannot be arrested or served before return of *cap. ad respond.* you must make out a *capias* by continuance, and so continue same till defendant is arrested or served.

Peers spiritual and temporal, members of the *Persons pri-* house of commons, foreign ambassadors and viledged from their menial servants, the King's servants, except leave obtained from the lord chamberlain, attorneys, executors, and administrators, unless on a *devastavit* returned, infants and married women, cannot be held to bail. *Barnes* 410 *Edit.* 100.

rendered



Sailors and  
soldiers.

Nor can sailors in his Majesty's service be arrested for a less sum than 20 l. nor soldiers unless the original cause of action amounts to 10 l. or for some criminal matter, but may be surrendered in discharge of bail; volunteers are not privileged from arrests. 29 & 30 Geo. 2. Service is held to continue whilst the seaman's name remains in the ship-books. *Barnes 410 Edit. 95.*

Form of  
esp. ad re-  
spond'.

*George the Third, &c. To the sheriff of Middlesex, greeting: We command you, that you take A. B. late of London, merchant, and John Doe, late of the same place, gentleman, if they may be found in your bailiwick, and safely keep them, so that you may have their bodies before our justices at Westminster, on (the return) to answer to C. D. in a plea, wherefore with force and arms, the close of the said C. at London, they broke, and other wrongs to him did to the great damage of the said C. and against our peace, (here insert an ac etiam if the action is bailable): And have you there this writ. Witness Sir William De Grey, Knight, at Westminster, the teste (if in term, the first day of term; if in vacation, the last day of preceding term) in the 12th year of our reign.*

This writ hath the filacer's name of county where sued out, and if defendant is to be served therewith, you add a notice.

Mr. A. B.

Notice.

21 Geo. 2.

You are served with this process to the intent that you may by your attorney appear in his Majesty's court of Common Pleas at the return thereof, being the            day of            in order to your defence in this action.

R. R.      April 1772.

Mid-

Middlesex, to wit, cap. for C. D. against A. B. Precipe for  
late of London, merchant. Trespas at West- cap. ad re-  
minster. spond.

Returnable (the return). where no  
bail required.

R. R.

May, 1772.

## FORMS of AC ETIAMS to hold Defendant to Bail.

And also that the said A. may answer the said Case.  
C. according to the custom of our court of Com-  
mon Bench, in a certain plea of trespass on the  
case on promise, to the damage of the said C. of  
100l.

SAY in a certain plea of debt on demand for Debr.  
100l.

And also that they the A. B. and E. F. and When a-  
G. H. may severally answer the said A. B. ac- gainst several  
cording to the custom of our court of Common defendants  
Bench, to wit, the said A. B. in a certain plea in debt and  
of trespass on the case on promise, to the damage case.  
of the said C. D. 20l. the said E. F. in the like  
plea, to the damage of the said C. D. 50l. and  
the said G. H. in a certain plea of debt on de-  
mand, for 200l.

And also that they the said A. B. and E. F. When a-  
may severally answer the said C. D. according, gainst two  
&c. in a certain plea of debt on demand for obligors on  
100l. bond.

And also that the said A. B. may answer the When at the  
said C. D. and N. his wife, the said N. being suit of hus-  
executrix of the last will and testament of J. G. band and  
her late husband deceased, according to the wife, the  
custom, &c. wife execu-  
trix of her  
As late husband.

When at the  
suit of hus-  
band and  
wife, wife  
being admi-  
nistratrix.  
Trover.

As before, only instead of saying executrix,  
&c. say administratrix of the goods and chattels  
of J. G.

In a certain plea of trespass on the case, for  
converting and disposing of the goods and chat-  
tels of the said C. D. to the value of 500l.

Detinue.

In a certain plea of trespass on the case, for  
detaining the goods and chattels of the said C. D.  
to the value of 100l.

Assault and  
battery.

In a certain plea of trespass and assault, for  
beating, wounding, and ill treating the said  
C. D. to his damage of (*the sum the judge makes  
an order for bail for*).

### FORMS of *special preceipes*.

Debt.

*Middlesex*, to wit, CAPIAS for C. D. against  
A. B. late of, &c. taylor. Trespass at *West-*  
*minster*, and for 50l. debt.

*Capias* returnable. (*The return*).

R. R. June, 1772.

Debt against  
two.

*Middlesex*, to wit, CAPIAS for C. D. against  
A. B. late of, &c. taylor, and E. F. late of &c.  
and oilman. Trespass at *Westminster*, and for  
200l. debt severally.

*Capias* returnable, &c.

Indorsement

Affidavit against A. B. for 50l.

E. F. for 50l.

R. R. June, 1772.

Cafe against  
two defen-  
dants,

*London*, CAPIAS for C. D. against A. B.  
late of, &c. and E. F. late of, &c. Trespass  
at *Westminster*, and for 100l. cafe severally.

*Capias* returnable, &c. (*As before*)

A. for



Surry, to wit, CAPIAS for C. D. against A. In assault.  
B. late of Southwark, in your county, grocer,  
trespass at Southwark.

Return, &c.

Surry, to wit, CAPIAS for C. D. against A. B. late of, &c. trespass at Southwark, and for 50 l. in assault. In assault when to hold to bail.

Return, &c.

By order of Mr. Justice

Indorsement, bail for 50 l.

R. R. June, 1772.

Middlesex, to wit, CAPIAS for C. D. against A. B. late of, &c. trespass at Westminster. In covenant

Return, &c.

Middlesex, to wit, CAPIAS for C. D. against A. B. late of, &c. trespass at Westminster. In account as receiver.

Return, &c.

London, to wit, CAPIAS for C. D. against A. B. late of, &c. trespass at London, and for 100 l. debt. In annuity, when by bond.

Return, &c.

When you sign interlocutory judgment, you must get filiter to make out the original to warrant same; for which you pay him 2 s. 6 d. for the first count, and 6 d. for every other, if the debt sworn to is above 40 l. You pay him for the King's fine according to the following table. Where a verdict is obtained, no original is necessary. Note:

E

From



|   |                                  |   |   |   |    |    |   |
|---|----------------------------------|---|---|---|----|----|---|
| Table by<br>which the<br>King's fine<br>is regulated. | From 40l. to 100 marks           | - | - | 0 | 6  | 8  |   |
|   | From 100 marks to 100l.          | - | - | 0 | 10 | 0  |   |
|   | From 100l. to 200 marks          | - | - | 0 | 13 | 4  |   |
|   | From 133l. 6s. 8d. to 166l. 13s. |   |   |   |    |    |   |
|   | 4d.                              | - | - | - | 0  | 16 | 0 |
|   | From 166l. 13s. 4d. to 200l.     | - | - | 1 | 0  | 0  |   |
|   | For every 100l. more             | - | - | 0 | 6  | 8  |   |
|   | For every 200l. more.            | - | - | 0 | 10 | 0  |   |

Precipe for  
capias by  
continuance. *Middlesex, to wit, CAPIAS by continuance  
for C. D. against A. B. &c. (varying it accord-  
ing to the nature of the action).*

Return, &c.

R. R. June 1772.

There is no difference in the *capias* by *conti-  
nuance* from the first *capias*.

You must take out *capias* by *continuance* in this  
manner till defendant is arrested or served with  
process.

The sum sworn to must be indorsed on writ,  
together with attorney's name, day, month,  
and year when sued out.

Carry *precipe*, writ, and affidavit (if *bailable*)  
to the filacer of the proper county, who will  
make out *capias*, or you may make it out your-  
self; pay him, if you make it out, and find  
stamp 2s. 6d.; swearing affidavit 1s.; sealing  
at seal office 7d.; serve it, or get warrant from  
sheriff.

These writs may be had at the law stationers,  
which you fill up and vary according to the na-  
ture of the action to be brought.

If the action doth not require bail, you sue  
out, and serve a common *capias* as directed  
in precedents thereof.

The

The filacer procures the original on which Note. *capias* is founded, and returns and files same. There must be fifteen days between teste of *capias* and return of original, but the return of original is settled by filacer; the attorney need only to take care the *capias* has a proper return.

If defendant does not reside in the county where you intend to try the cause, and the writ *tatum capias* requires bail, you make out a *capias* into the county where defendant resides, and a *testatum capias* into county where you intend to try the cause, or otherwise the plaintiff will lose his bail taken of defendant on such action.

London, to wit, CAPIAS for C. D. against Precipe for a *capias*.  
A. B. late of, &c. trespass at London.

Return, &c.

Lincoln, to wit, TESTATUM CAPIAS, for Precipe for C. D. against A. B. late of, &c. and for 100l. *test. capias*.  
on promise.

Returnable, &c.

Affidavit for 50l.

R. R.

June, 1772.

GEORGE the Third, &c. To the sheriff Form of *test.* of Lincoln, Greeting: WE COMMAND you *capias*. that you take A. B. late of, &c. if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster*, on (the return) to answer to C. D. of a plea, wherefore with force and arms he broke the close of the said C. D. at London, and did other injuries to him to the great damage of the said C. D. and against our peace, (or according to the nature of the action, as directed

## The Modern Practice of the

by the foregoing *precipes*): AND ALSO that the said *A. B.* answer the said *C. D.* according to the custom of our court, of the bench in a certain plea, &c. as directed under head of *accusations*, according to the nature of the case; and whereupon our sheriffs of *London* returned to our justices at *Westminster*, at a certain day now past, that the said *A. B.* was not found in their bailiwick, whereas it is testified in our said court, that the said *A. B.* doth lie hid, and run from place to place in your county, and have there this writ. Witness, Sir *William De Grey*, Knight at *Westminster*, &c.

Pay filacer signing this writ, 7s.; sealing at seal office, 1s. 2d. If a *testatum by continuance*, signing 4s. 10d.; sealing 7d.

If defendant lives in any liberty which sheriff cannot enter, as the *cinqve ports*, &c. you must make out a *non omittas*.

*Precipe for non omittas capias.*

*Northampton, Non omittas capias for C. D. against A. B. late of, &c. and also for, &c.*

Return, &c.

Affidavit for 50l.

R. R.

June, 1772.

Form of non omittas.

GEORGE the Third, &c. To the sheriff of *Northampton*, Greeting: WE COMMAND you that you do not omit by reason of any liberty of the liberty of *O.* in your county, but that you take *A. B.* late of, &c. if he shall be found in your bailiwick, and that you keep him safely so that you may have his body before our justices at *Westminster*, on (the return) to answer *C. D.* of a plea, &c. as in *precipes*, &c. And also that the said *A. B.* may answer the said *C. D.*



C. D. &c. as in *ac etiams*, &c. And whereupon you returned to our justices at *Westminster* at a certain day now past, that the bailiff of the aforesaid liberty, whom you commanded by virtue of our said writ to you thereupon directed, to take the said A. B. gave you no answer thereto, and have there this writ. Witness, Sir William De Grey, Knight, at *Westminster*, &c.

If defendant cannot be served or taken on the *testatum capias*, or *non omittas capias*, you issue continuances as you do on the common *capias*.

Pay filacer signing *non omittas*, 8 s. 6 d. sealing at seal office, 1 s. 2 d.

If a *non omittas testatum*, pay filacer signing, 11 s. 10 d. sealing at seal office, 1 s. 9 d.

The *testatum* is always signed by filacer of county where you intend to try cause, to the sheriff of which county same is directed.

All these writs have the filacer's name there-to, who signs same.

London, ATTACHMENT of privilege for *Precipe for*  
C. B. Gent. one, &c. against C. D. deft. (or attachment  
as action may be). of privilege.

Return, &c.

R. R.

June, 1772.

Affidavit for 100 l.

GEORGE the Third, &c. To the sheriffs Form of at-  
of London, Greeting: Attach C. D. so that you tachment of  
may have him before our justices at *Westminster*, privilege.  
on (the return) to answer C. B. gentleman, one  
of the attornies of our court of the bench, ac-  
cording the liberties and privileges of the same  
court for such attornies, and other ministers of



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the same bench from time out of mind, used and approved of in the same of plea of trespass on the case, (or as the nature of the action is) and have you there this writ. Witness, Sir William De Grey, Knight, at Westminster, &c.

This writ must be ingrossed on a 2 s. piece of stamped parchment, indorsed with sum sworn, attorney's name, day, month, and year sued out as on *capias*.

It is considered in the nature of an original, and must have fifteen days between the *teste* and return.

There is no *ac etiam* necessary in this writ, though to hold to bail.

Carry *precipe* and writ to prothonotary's office, who signs same; pay nothing; then carry it to clerk of the warrants, who marks it before sealed, for which he charges nothing, unless the attorney suing out same is his debtor for termages, and then such debt must be discharged before he will mark writ; pay at the seal office sealing this writ 1 d.

If it is not bailable, but to be served, add a notice as directed under head of common *capias*.

All these writs must (if in Middlesex) be carried to the sheriff's office in *Furnival's Inn*, where the proper officer will make a warrant thereon, directed to such officers as you may think proper to name; pay for warrant 4 d. If in *London*, to one of the compters, *viz.* *Woodstreet*, or the *Poultry*, pay for warrant same as in *Middlesex*. The sheriffs of *Kent*, *Surry*, and *Essex*, charge 6 d. for a warrant; most other counties, warrant 2 s. 6 d. High bailiff of *Westminster's* warrant 2 s. 4 d.

Practical remarks.

The very day of return of process must be inserted in writ, although it should happen to be

on Sunday, Rules and Orders in C. B. Hil.  
7 Geo. 2.

All process to be served, must have a notice at bottom of the intent and meaning of such service. 21 Geo. 3.

Attorney must not charge more than 5s. for service of process including notice. Stat. 5 Geo. 2.

In particular liberties, if process is not served by proper officer, court will not stay proceedings; the Lord of the liberty must bring his action for the trespass. Barnes 4to Edit. 404.

If the person you want to serve with process lives within the jurisdiction of the Cinque Ports, he must be served with a copy of *test. capias*, which must be directed to the constable of Dover castle. Barnes 4to Edit. 422.

In a county *palatine*, defendant must be served with a copy of the process, and not with the chancellor's mandate. Barnes 4to Edit. 406.

A writ against man and wife, service on husband is sufficient for both; if plaintiff appears for them, he must enter an appearance for both. Barnes 4to Edit. 412.

In a joint action, and process served, each defendant must be served with a true copy of such process. Barnes 4to Edit. 405.

If the attorney's name is omitted to be indorsed on copy process served, court will stay proceeding on motion. Barnes 4to Edit. 415.

This court will not permit process to be served on the return day, nor after nine o'clock in the evening on any day. Barnes 4to Edit. 415.

Errors in writ or service must be complained of, and redressed by court before interlocutory judgment signed, or they will not grant relief. Barnes 4to Edit. 269.

- Warrant

Warrant on writ not vitiated for want of the attorney's name. 12 Geo 2.

If a person is protected by a foreign minister, sheriff is not compelled to execute his warrant against such person. *Barnes 4to Edit.* 417.

Writs in this court grounded on originals, must have fifteen days between the *teste* and return. *Gilb. Hist. & Pract. C. P.* 9.

So must a writ of privilege, which is in the nature of an original. *Sir George Cooke's Cases C. B.* page 149. *Barnes 4to Edit.* 410.

*Capias ad respondendum* may be quashed on motion, if it hath not fifteen days between the *teste* and return. *Barnes 4to Edit.* 420.

*Capias* will not lay against a corporation, the proceedings must be by *pone* and *distingas*. *Barnes 4to Edit.* 415.

If date of writ omitted, a penalty of 10*l.* lays against officer who sues out same. *Per Stat. Will.* 3. Rule, *Trin.* 21 & 22 Geo. 2.

If process against two executors, both must be served before you can proceed against either, or him that cannot be served must be sued to an outlawry. *Pract. Reg. C. P.* 351.

On an original in this court, plaintiff may proceed by *pone* and distress, or in the usual way take out a *capias* on the original, which he pleases; but if he only serves copy of such original on defendant, it amounts to nothing more than notice of the debt, and is not such a service on the person as directed by the statute. *Barnes 4to Edit.* 410.

### DIRECTIONS for suing out and returning an Original or Attachment of Privilege, to save the Statute of Limitations.

You must make *precipe* for original according to the nature of the action; carry same to the proper



proper filacer, who will procure original, which, when ready, you carry to sheriff's office, who returns same *non est inventus*. Pay sheriff returning writ 8 d. pay filacer for original same as in a common case; when writ returned, carry same to filacer who files the writ; pay him filing 4 d.

You make out attachment of privilege as usual; carry same to sheriff's office to be returned; pay sheriff returning same *non est inventus* 8 d. then file attachment with prothonotary; pay filing 4 d.

GEORGE the Third, &c. To the sheriff of *Middlesex*, Greeting: IF C. D. shall make you secure in prosecuting his claim, then put by gages and pledges, A. B. late of, &c. (as in *precipe and declaration to the end*) and have there the names of the pledges and this writ. Witness ourself, at *Westminster*, &c.

Form of special original to save the statute of limitation.

This writ is procured by the filacer on the following *precipe*.

*Middlesex*, to wit, If C. D. shall make you secure in prosecuting his claim, then put by gages and safe pledges, A. B. late of, &c. of a plea that WHEREAS (as in *declaration by original to the end*).

Precipe for original.

Return, &c.

R. R.

June, 1772.

## I N F A N T S.

*The method in which they must prosecute or defend suits.*

Defendant is not obliged to plead to declaration at the suit of an infant, till rule produced, admitting



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admitting him to declare by guardian: Nor need infant present petition for that purpose, till time to declare or plead.

In a town cause, infant must attend judge of the court with a friend, and pray that such person may be admitted his guardian; when judge's clerk draws up admission, which judge signs, and then it is filed with the filacer for *London and Middlesex*. If infant resides in the country, the business is done in the following manner;

In the C. B.      Between { A. B. plaintiff.  
  { C. D. defendant.

**Form of petition to assign an infant a guardian.**

*To the Right Honourable Sir WILLIAM DE GREY, Kat. Lord Chief Justice of his Majesty's Court of C. B.*

The humble petition of *A. B.* an infant, under the age of twenty-one years, the plaintiff in this cause:

**Sberweib.**

That your petitioner has, as he is advised, good cause of action against the defendant C. D. (*here mention cause of action*), and that your petitioner has lately brought his action against the said C. D. in this honourable court for such (*whatever the cause of action is*) but in regard to your petitioner's infancy,

Your petitioner humbly prays your Lordship would be pleased to assign his uncle E. F. as and for your petitioner's guardian, to prosecute his said suit or action against the said defendant C. D.

And your petitioner shall, &c.

**A. B.**

**I do**

**Court of Common Pleas.**

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do accept and agree to be guardian to the plaintiff *A. B.* an infant, according to the prayer of the above petition. Witness my hand the day of 1772.

Guardian's consent to be wrote at the bottom of the petition.

*E. F.*

This petition to be wrote on a sheet of treble sixpenny stamped paper.

Affidavit must be made of the infant's signing the petition, and also of guardian's consent; for form thereof, see page 28.

On carrying petition and affidavit to judge's clerk, he writes on a small unstamped piece of parchment the following admission.

*BUCKS*, to wit, *A. B.* who is within the Form of age of twenty-one years, is admitted by the court of our bench, by *E. F.* his guardian, to prosecute and defend all, and all manner of actions and suits now depending in this court.

Pay judge's clerk for judge's signing admission with or without petition, 12 s. when signed, carry it to the filacer of the county, who files same. Pay filing 4 d.

It is no record till filed.

The same steps are to be taken to defend a suit *mutatis mutandis*.

If infant does not appear in due time, plaintiff must procure affidavit of service of process, and that defendant is an infant, and hath not appeared (*see head of Affidavits*) on which judge will make an order without summons, that unless infant appears within days after personal service of said order, plaintiff may assign him a nominal guardian, and enter an appearance for defendant; and on affidavit of service of this order, judge will make the same absolute, and then admission is drawn up and filed as in the former

How to proceed when an infant being defendant, does not appear.

former case. This act only brings defendant into court, for before he will be admitted to plead, he must get himself admitted in the usual way.

Infant liable to the debts of his wife of full age, and may be held to bail for same. *Barnes 4to Edit. 95.*

Infant, though served with process, with a notice to appear by attorney, is compellable to appear by guardian in all causes of action not bailable. *Barnes 4to Edit. 418.*

Form of declaration at suit of an infant.

*Middlesex*, to wit, *C. D.* late of the parish of *St. Mary le Strand*, in the county of *Middlesex*, Gent. was attached to answer *A. B.* who is within the age of twenty-one years, by *E. F.* his next friend, hereunto specially admitted by the court of our bench, at *Westminster*, of a plea of trespass on the case, &c. and thereupon the said *A.* by *R. R.* his attorney, complains, That whereas, &c. (*as in common declaration, using the infant's name instead of the name of the guardian*).

### COMMON APPEARANCE.

Defendant being served with a copy of *capias*, or attachment of privilege, must, in eight days, exclusive of the returned day, enter an appearance by attorney. *Stat. 5 Geo. 2.*

Manner of enter appearance.

If on *capias*, appearance must be entered with the filacer of the proper county where same sued out: On *attachment*, appearance must be entered at the prothonotary's office; pay for same 3 s. 10 d.; at the filacer's, pay 2 s. 6 d. if one defendant; if several sued jointly, pay 2 s. 6 d. for first defendant, and 4 d. for each of the others; if sued separately, 2 s. 6 d. each defendant.

If



If defendant does not appear in time, plaintiff may enter an appearance for him, according to the statute, having first made and filed an affidavit of service of process, (*see page 25*) which may be sworn before a judge of the court, commissioner, filacer of the county, or his deputy, and is to be filed by him *gratis*. Pay swearing affidavit 1 s.

In the Common Pleas.

A. B.

against

C. D. late of London, merchant.

R. R.

Form of entering common appearance in filacer's book.

In eight days after return of writ, exclusive Time when of the day of return, *viz.* If returnable 6th to be filed. *November*, must be filed 15th *November*.

If defendant's attorney hath neglected to file Observation. common appearance in time, he may search at the filacer's or prothonotary's, to see if same is filed by plaintiff's attorney; and if not done, he may do it for defendant, though after the time directed by statute 5 *Geo. 2*.

Plaintiff cannot enter an appearance for de- Practical re- fendant till the ninth day. *Barnes 4to Edit. 245.* marks.

And if plaintiff enters an appearance for defendant sooner, defendant must complain of the irregularity before judgment signed. *Barnes 4to Edit. 242.*

If a man and his wife be sued, husband must appear for both.

If the wife only is arrested, she may be discharged on common appearance. *Barnes 4to Edit. 67.*

Attorney promising plaintiff's attorney to appear for defendant, if writ be then taken out, court will oblige him so to do; and his not having done so, shall not prevent plaintiff's signing interlocutory judgment, who is not obliged to take notice of any attorney that may afterwards appear to be concerned for defend-

G

dant.



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dant. Same doctrine where he indorses undertaking to appear. *Barnes 4to Edit.* 238. *Rep. C P.* 65, 116.

If an infant is defendant, and won't appear by guardian, plaintiff may apply to judge, and obtain an order to name a guardian for him. *For form thereof see page 52.*

If common appearance is ordered, instead of special bail, the foregoing precedent is sufficient. Error in process is cured by defendant's appearance. *Barnes 4to Edit.* 406.

### SPECIAL BAIL ON CAPIAS, &c.

Form of recognizance of bail.

LONDON, *Capias* against C. D. late of London, merchant, at the suit of A. B. for 150l. upon promise returnable.

(The return).

Affidavit for 75l

Bail, E. F. of the city of London, Gent.  
G. H. of the same city, mercer.

The defendant bound in  
150l.

Each of the bail in 75l.

Taken and acknowledged the  
day of  
before

&c.

R. R.

Attorney for the  
defendant.

### DIRECTIONS for putting in Bail,

How to be put in a town cause.

The filacer, or other officer from whom writ issued, must attend bail to a judge of the court; judge's

judge's clerk takes the bail, and filacer, or other officer, make an entry thereof in his bail-book. On application, he will afterwards draw up same, if there should be occasion to sue the bail.

The attorney concerned for defendant, must take care to apply to the proper filacer for entering the bail; for if same is entered in the wrong office, plaintiff may take an assignment of bail-bond, and defendant will not be admitted to plead till he hath paid full costs of such assignment. *Trin. 1 W. & M.*

Bail on *testatum cap.* must be entered and filed with filacer of county wherein action first brought, or the bail-bond may be assigned.

If filacer does not attend you to judge, to take recognizance of bail, then you draw out same according to the above form; if he attends, it is unnecessary, it being most usually done by entry in the filacer's book; and if at the suit of a privileged person, in the prothonotary's book: For this purpose you must bring officer a true abstract of the writ.

This recognizance must be wrote on a double 1s. stamped piece of parchment of the above form. Carry same, with bail intended to be put in, to any judge of the court, and his clerk will take same. Pay putting in bail in term, 5s. in vacation, 12s. and 4s. 6d. to the filacer or prothonotary.

Notice must be given plaintiff's attorney within time for putting in bail in manner following:

In the C. B.

A. B. plaintiff,

and

C. D. defendant.

Take notice that special bail was this even- Form of no-  
ing (or as the case is) put in for the defendant, tice of bail  
in this cause, before Mr. Justice (the judge be- above.

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fore whom you put in bail) at his chambers in Serjeant's Inn, Chancery Lane, London; and the names of the bail are J. B. of, &c. (place of abode, parish, and occupation), and J. C. of, &c. (ditto).

If you have a mind to try the cause in term, then, for dispatch, you may add this notice of justification, (or otherwise not): AND ALSO take notice, that the court of Common Pleas will be moved on (day of the week you intend to move), or so soon after as council can be heard, that the above bail may justify themselves in open court as good bail for the said defendant. Dated (day, month, and year you serve notice).

Your's, &c.

To Mr. C. B. attorney } R. R. defendant's  
for the plain iff in } attorney, (or a-  
this cause: These. } gent, if so.)

Practical re-  
mark.

There must be two full days notice of justification, exclusive of day same is given, and three, if Sunday intervenes.

Time bail  
must be put  
in.

In London and Middlesex, special bail must be put in in four days exclusive after return of writ. If in any other county or city, in eight days exclusive of the appearance day, or bail-bond may be assigned. Rule, Hil. 9 Ann.

Practical re-  
mark.

If the fourth or eighth day falls on a Sunday, the defendant has all day on Monday to put in bail.

Of putting  
in bail in the  
country.

Carry recognizance (on same stamp and form as before) to a commissioner of the court, and he will take recognizance.

Time to  
transmit  
same.

If bail be taken by a commissioner within forty miles of London and Westminster, it must be transmitted to one of the judges within ten days after taking thereof. If above forty miles, in twenty days, unless all the judges of the court be on their circuits, and then as soon as any one shall return to London. Hil. 6 Geo. 1.

These



These times must be punctually observed by attorney for defendant, or bail-bond may be assigned; when assignment set aside, bail cannot be filed without leave of court. *Mich. 6 Geo. 2.*

Exception to bail in *London and Middlesex* is Excepting a-  
to be entered in the filacer's book; if at the suit gainst bail.  
of a privileged person, in the prothonotary's;  
in any other counties, under recognizance filed  
with the filacer of the county: Nothing is paid  
for this entry.

I except against these bail.

C. D. plaintiff's attorney.

12th Nov. 1772.

Form of ex-  
ception.

Notice in writing of exception must be given  
defendant's attorney, or agent. *Barnes 410*  
*Edit. 88.*

S I R,

Take notice that I have excepted against the Notice of ex-  
bail above put in for the defendant in this ception to  
cause. defendant's  
attorney.

Your's, &c.

C. D. plaintiff's attorney,

12th Nov. 1772.

To Mr. R. R. de-  
fendant's attor-  
ney: These,

Exception to bail must be made in a town cause Time plain-  
within twenty days after notice to plaintiff, or ti f must en-  
his attorney, of same being put in; exception ter exception  
after that time void and of no force. *Mich. 8* to bail in a  
*Ann. K. B.* Same practice in this court. town cause.

If put in before commissioner in the country, When taken  
exception must be made within twenty days in country.  
after recognizance transmitted to judge's cham-  
bers, and notice given to plaintiff or his attorney  
of taking same. Rule, *Easter 5 W. & M.*

Then on affidavit made by defendant's attor- If not excep-  
ney, or any other person who served notice of ted against in-  
bail, time,  
G. 3.



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bail, to be indorsed on recognizance; for which oath no fee to be taken; defendant's attorney may file recognizance within four days next after the said twenty days, with the filacer of the county, or prothonotary, if at the suit of a privileged person. Pay 6s. filing, then bail is complete. See form of affidavit thereof, page 31.

Method of  
justifying bail  
on plaintiff's  
exception.

If notice of exception given defendant's attorney in term, bail must justify in four days (*exclusive*), or must add others who will. If exception given in vacation, defendant hath till the first four days of subsequent term to justify his bail; giving notice of such intended justification in mean time. *Barnes 4to Edit. 74, 79.*

Observation.

In affidavit of justification, the word *just* must not be annexed to *debts*. *Barnes 4to Edit. 67.*

If defendant's attorney wants time in term or vacation to put in bail above, add or justify same, he may get it on summons before a judge; see head of *summons*; but then he will be tied down to terms, which may hurt his client's interest, who may only defend suit to gain time.

In the C. B.

A. B. plaintiff.

C. D. defendant.

Notice of  
justifying  
same bail as  
excepted a-  
gainst.

Take notice that the bail put in for the defendant in this cause, of whom you have before had notice, will, on (*the day you intend to justify your bail*), justify themselves in open court as good bail for the said defendant.

Dated, &c.

Your's, &c.

To Mr. C. D. }  
plaintiff's attorney. }  
These.

R. R. defendant's at-  
torney.

If bail put in cannot justify, you may add and justify others in court at the same time.

In

In the C. B.

A. B. plaintiff,

and

C. D. defendant.

Take notice, that on (*the day you intend to add and justify*) J. K. of, &c. and G. R. of, &c. will be added to the bail above put in for the defendant in this cause, of whom you have before had notice; and that the said bail so to be added as aforesaid, will justify themselves in open court as good bail for the said defendant. Dated, &c.

Notice of  
adding and  
justifying  
bail at the  
same time.

To Mr. C. D. }  
plaintiff's at-  
torney: These.

Your's, &amp;c.

R. R. defendant's at-  
torney.

If one bail be added, and one of the original bail justify at the same time with the person added, vary the notice according to the fact. Note.

Copies of all these notices must be served on plaintiff's attorney, by leaving same at his house with some one of his servants.

Affidavit must be made by the person who serves notice of justification; *vide page 41*; which, when you move to justify, must be annexed to notice of motion for serjeant to move to justify; and same read in court by the proper officer.

Bail cannot justify in a town cause at judge's chambers, without consent of plaintiff's attorney. Where bail are notoriously good, they are frequently allowed by plaintiff's attorney, on being paid the compliment of 10 s. 6 d. In that case, if he doth not attend to see them justify, you take from him a consent in writing to the effect following:

In the C. B.

A. B. plaintiff,  
and  
C. D. defendant.

Form of at- I do consent that the bail above put in for the  
torney's con- defendant in this cause, may justify themselves  
sent to justi- before Mr. Justice (*the same judge before whom*  
fy bail. *bail were put in*) as good bail for the said defen-  
dant. Dated day of 1772.

Your's, &amp;c.

To Mr. R. R. de-  
fendant's attor-  
ney: These. }

C. B. plaintiff's  
attorney.

On this consent, you carry bail to judge's chambers; and on shewing same to judge's clerk or filacer, he will justify your bail. Pay filacer 3 s. 4 d. judge's clerk 2 s. each person justified.

Bail taken  
before com-  
missioner in  
the country.

Bail need not personally attend court to justify. It is done by affidavit of their ability taken before commissioner, and transmitted to judge annexed to recognizance. *Vide Affidavits*, page 26.

How to jus-  
tify bail in  
court in a  
town cause.

Get filacer to attend the court with bail-book or recognizance; pay him 3 s. 4 d. Having bail ready, give serjeant the notice and affidavit of service annexed, and 10 s. 6 d. to move to justify. On his moving, bail will be called in- to court, and sworn to their sufficiency. Court fees on justifying bail in court, 8 s. 10 d.

Bail being justified, draw up rule with the secondary of bail justifying; pay for same 4 s. 6 d. Serve copy on plaintiff's attorney. Take recognizance from judge's chambers, and file same with filacer; pay 5 s. filing, and then bail is complete.

Method of  
justifying  
bail taken  
by a commis-  
sioner in the  
country.

Get serjeant to move to justify on affidavit of justification; pay him 10 s. 6 d. for motion, and court will order recognizance to be filed.

Rule



Rule is to be drawn up and served, and bail-piece filed as before. Same court fees paid.

To prevent exception, it is usual to send a copy of the affidavit of justification, with the notice of the bail put in.

Bail being put in before a judge, or transmitted from a commissioner, must be filed immediately with the filacer by attorney who does same, or prothonotary. *Mitch. 6 Geo. 2.* Within what time, bail when complete, must be filed.

Every bail taken before or upon the continuance-day, shall be a bail, and filed of the preceding term; and every bail taken after the continuance-day, shall be a bail, and filed of the subsequent term, and not otherwise; but where any new bail is added to any other bail taken on or before the continuance-day, the same shall be taken as filed as of that term in which the bail was first put in. *Gilb. Pract. K. B. page 341.* Same practice in this court. Observation.

If plaintiff can find out any legal disability of the bail put in for defendant, he must procure an affidavit to be made of same, (*see page 43*) which must be given to a serjeant to oppose bail when they appear to justify; and court, if of opinion that the matter of objection is of sufficient weight, will refuse to admit them to justify. In this case, court will give one or two days to defendant to add and justify others. Method of opposing bail.

Where debt does not require bail in its original state, the addition of costs will not warrant it. Practical remarks.

If a bail is required as a witness in a cause in which he is bail, court on motion will order him to be struck out of the bail-piece, on defendant's putting in another good bail. *Barnes 4to Edit. 69.*

No justification of bail in a town cause, but by personal appearance in court, without consent



sent of plaintiff's attorney. *Barnes 4to Edit.* 101.

No special bail in debt on judgment, where defendant hath superseded the original action, nor where he hath superseded himself for want of being charged in execution within two terms. *MSS. Case.*

Putting in bail where not necessary, doth not prevent court from ordering common bail. *Barnes 4to Edit.* 87, 107.

In an action upon the stat. of 9 *Ann.* for gaming, special bail must be given. *M.S. Cases.*

Where defendant lies in prison till action supersedable, though he afterwards gives a security for the debt, he shall not be held to bail. *Barnes 4to Edit.* 116.

Husband and wife both arrested, husband must put in bail for both. *Barnes 4to Edit.* 242.

In covenant, bail only where damages can be reduced to a certainty, on bond to save harmless, plaintiff must swear positively how, and for how much, he is damaged. *Barnes 4to Edit.* 106, 109.

Bail put in before arrest, and not excepted against within the time limited by the rules of this court, held regular after notice given to plaintiff's attorney. *Barnes 4to Edit.* 81.

Declaration delivered, unless *de bene esse*, or plea demanded before bail is perfected, is a waiver to plaintiff's exception against bail. *Barnes 4to Edit.* 92, 105.

If defendant goes to goal before return of writ for want of bail, he must put in and perfect bail above, before he can get discharged; when perfected, he may be discharged on summons. *MSS. Case.*

Bankrupt

Bankrupt obtaining his certificate before his bail are fixed, the bail are discharged, otherwise not. *Barnes 4to Edit.* 105.

Infant may be held to bail for debts contracted by his wife of full age. *Barnes 4to Edit.* 95.

Bail to the sheriff being bail above, may be excepted against. *Barnes 4to Edit.* 63.

Court will give time to rectify a mistake of filing bail in a wrong office. *Ibid.*

Each bail liable to the whole penalty, if not more than the sum recovered. *Barnes 4to Edit.* 76.

Two days notice of justification the general rule in all cases, and denied to be enlarged. *Barnes 4to Edit.* 88, 101.

Where defendant arrested by a wrong addition, putting in bail to the sheriff is the only way to save the advantage of pleading in abatement. *Barnes 4to Edit.* 94.

Plaintiff may in any case where same bail is put in above, rule sheriff, or take an assignment of the bail-bond, if he does not approve of bail. Rule, *Micb. 6 Geo. 2.*

Take out rule at the prothonotary's office to return the writ; pay for same 4s.; it is a four-day rule, serve copy of same on sheriff or his deputy, if sheriff returns writ, viz. a caption made, or neglects so to do, in either case take out second rule to bring in the body; pay for same 4s.; it is a four-day rule; serve same on sheriff or his deputy, and if bail are not justified by or before the expiration of the said rule, then upon affidavit of service of the said two rules, (*see page 42*) and on motion grounded thereon, court will grant an attachment against sheriff.

Manner of ruling sheriff to compel justification.

Draw

How to procure and execute attachment against sheriff. Draw up rule with prothonotary for attachment; pay for same 5 s. ; take it to Mr. *Burrow* at the Crown Office in King's Bench Walks, *Temple*; pay for attachment 13 s. 4 d.; carry attachment to the coroner of the county, who makes out warrant thereon, and attaches the sheriff. On return of attachment call on coroner, who will pay you the money, and charge you about 1 l. 1 s. for same.

Where sheriff or his deputy absconds to prevent his being served with rule, on affidavit and motion, court will order that leaving a copy at his house shall be deemed good service. *Barnes 4th Edit. 35.*

#### ASSIGNMENT OF BAIL-BOND.

Stat. 4 & 5 Ann. How to get assignment from sheriff. If bail be not duly put in, or if excepted against, do not justify themselves in due time. If in *Middlesex*, apply to under-sheriff at his office in *Furnival's Inn*; if in *London*, apply to secondary of one of the compters, and in the country to under-sheriff, who will make you assignment of bond, for which you pay him 5 s. and give him a receipt for same as plaintiff's attorney. In other counties, the fee on assigning bail-bond differs, but not much.

Before any writ taken out, or action brought on bail-bond, the same must be stamped with a treble sixpenny stamp, just over the top of assignment, and the Stamp Office, upon or near the stamp, write in red ink the day of the month and year the same was stamped. You get it stamped at the Stamp Office in *Lincoln's Inn*, who attend every day, except holidays, from eight to two o'clock at noon.

Method of bringing an action thereon.

Assignment of bail-bond being complete, you take out *capias*, &c. for it is the assignment that gives plaintiff a right to his action thereon.



thereon. Serve defendant and his two bail with copies of writs, and at return declare against them. See *Declaration*.

After you have once taken assignment of bail-bond, sheriff is not answerable for their sufficiency, nor can you resort back to him.

You must put in and perfect your bail, (*this must be done before you can have any relief from court*) pay costs incurred by bail-bond being assigned, to be taxed by the prothonotary; receive a declaration in the original action, plead to issue, and take short notice of trial, so that same may be tried in term; or if plaintiff hath lost a trial, the court will require that bail consent, that judgment be entered against them on bail-bond for plaintiff's security, or court will not stay proceedings on bail-bond. *Barnes 4to Edit. 85.*

General terms on which court will stay proceedings on bail-bond.

Relief under the above restrictions may be obtained by summons before a judge, or by motion of court. If by motion of court, notice thereof must be served on plaintiff's attorney, and affidavit of service of notice must be annexed to same when moved.

Sheriff cannot take bond on an attachment for contempt out of this court, nor out of Chancery. *C. P. 100.*

Practical remarks.

If error in writ on which bail-bond taken, bail discharged. *MS. Cases.*

Defendant hath four days exclusive of day of appearance in *London and Middlesex*, and eight in any other county, (*Sunday reckoned one, if not the last day*), to put in bail after return of writ. If assignment of bail-bond be taken before time limited, court on motion will set same aside with costs against plaintiff. *Rule, Hilary 9 Ann. Barnes 4to Edit. 77.*

Bail-bond must be taken in sheriff's name, and as sheriff, and for double the sum sworn to. *Stat. 23 Hen. 6. P. R. 67.*

H

Action



## The Modern Practice of the

Action on bail-bond must be brought in the court where original action brought. *Barnes 4to 117.*

No bail required on bail-bond, nor on action on replevin bond.

Where bail in the first action, tho' plaintiff nonsuited, defendant must put in bail to second action, if well founded. *Barnes 4to Edit. 73.*

Debt on bail-bond may be brought by an executor of assignee of sher. ff. *R. R. C. P. 68.*

Where same bail are put in above as to the sheriff, and excepted to, taking assignment of the bail-bond is not a waiver of the exception. *Rule, Mich. 6 Geo. 2. Barnes 4to Edit. 90.*

Proceedings on bail-bond stayed, defendant in original action dying before judgment could be obtained against him; but not stayed where, if he had put in bail in time, judgment might have been had against him. *Barnes 4to Edit. 99.*

Proceedings on bail-bond stayed, defendant in original action having become a bankrupt, and obtained his certificate. *Barnes 4to Edit. 105.*

## OF RENDERING PRINCIPAL.

**On capias or attachment.** Bail to sheriff must put in bail above, before they can take and render principal; and if excepted against, must perfect themselves before they can render.

**On bail-bond.** Bail, when bond assigned, must put in and perfect their bail, and then move court, or by summons before a judge, set assignment of bond aside on payment of costs, before they can take or render principal.

If plaintiff hath lost a trial in original action, bond cannot be set aside, nor can bail render.

**When render must be made.** If bail-bond put in suit against principal and bail, bail must take principal and complete render

der within the eight days for their appearance, which are exclusive of day of return of writ.

Bail being served with copies of writs, they may surrender the principal on the *quarto die post* of the return *sedente curia*, but not after. Rule, *Mich.* 1654. On action of debt on recognizance.

It is most prudent for bail to render principal on *ca. sa.* being returned, because plaintiff may proceed to fix them on getting two *nibils* returned without a rule given, or notice from sheriff, but he may be rendered on the appearance day, if but one *scire facias*, or on the appearance day of second *scire facias*, if two sued out, *sedente curia*; but if bail do not render principal on *ca. sa.* being lodged in the sheriff's office, the neglect is at their peril, and if he dies in the interval, they are fixed. Rule, *Mich.* 1654. If plaintiff proceeds by *scire facias*.

In the C. B.

A. B.  
against  
C. D.

*Middlesex*, to wit, C. D. the above defendant, Form of sur-  
did this day of 1772, render.

render himself (or was rendered in discharge of his bail) into the custody of the warden of the Fleet, at the suit of the above plaintiff in discharge of his bail, and was thereupon committed by (Mr. Justice—the judge before whom rendered.)

This render is left with judge's clerk where render made, and wrote on a piece of unstamped parchment. Pay judge's clerk for render 4 s. prothonotary or filacer, as the case may be, 6 s.; as soon as done, give plaintiff's attorney notice in writing of such render.

In the C. B.

A. B.  
against  
C. D.

S I R,

Take notice, that the above defendant, C. D. Form of rendered himself (or was rendered, as the case may be) of ren-  
H 2 may der.

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may be) into the custody of the warden, &c. the  
 day of                      in discharge of his  
 bail, at the suit of the above plaintiff A. B.  
 and was thereupon committed by (the judge be-  
 fore whom rendered) Dated                      day of  
 1772.

Your's, &c.

R. B. attorney for the  
 defendant, (or at-  
 torney for the bail,  
 as the case is.)

To Mr. H. plaintiff's }  
 attorney: There. }

There must be an affidavit made of service of this notice, before officer who hath the custody of the recognizance, will deliver same to be filed, or discharge the bail in his book. On producing affidavit sworn, he takes same and keeps it as his voucher, and delivers recognizance to the attorney to be filed, or discharge book, as case may be. *Vide Affidavits*, page 30.

Another copy of render in form aforesaid, wrote on parchment, must be signed by judge before whom same was made, and carried to the warden with defendant, or any other gaoler to whom defendant is to be rendered.

Warden (or any other gaoler) on producing render signed by judge, will give you a certificate that defendant is in his custody, which you must carry with recognizance to the prothonotaries or filacers office, who file certificate, and thereupon discharges recognizance; pay warden for certificate 3 s. 4 d. prothonotary for filing and discharging recognizance 4 d.

If defendant is in custody at the suit of another plaintiff. You must make out *habeas*, vide same under head of *habeas*, and lodge it with gaoler, in whose custody defendant is, and he will bring him into court, or to a judge's chambers, as the case may require, in order that he may render himself, or that his bail may do it; and the same steps must be taken by the bail to complete



plete render, as where defendant is at large; only *habeas*, and return thereof, is left with judge, and return of *habeas* marked on surrender, signed by him, which is carried over to gaoler, into whose custody defendant is rendered.

When render made, attorney must get a tipstaff to carry him over to warden or gaoler. The fee to tipstaff is 6 s. 8 d. or 10 s. 6 d.

On render, the particular hour of the day Practical remarks. that defendant rendered himself, or was rendered in discharge of his bail, must be specified by filacer or prothonotary in the entry of such render. *Barnes 4to Edit. 69.*

If defendant refuses to pay fees of render, the *reddidit se* will, on motion, be ordered to be struck off of bail-piece. *Barnes 4to Edit. 70.*

If plaintiff proceeds against sheriff by rule, bail may render principal, tho' plaintiff hath lost a trial. *Barnes 4to Edit. 60.*

Bail cannot render principal before return of writ. *Barnes 4to Edit. 88.*

Defendant cannot render himself, or be rendered, unless bail perfected in time. *Barnes 4to Edit. 105.*

Bail-bond not discharged, if defendant surrendered to a wrong prison. *Barnes 4to Edit. 64.*

Action on the recognizance cannot be brought against the bail if a writ of error be depending in the original action. *Sir Geo. Cooke's Rep. C. B. page 112.*

The King's debtor, or a person convicted of felony, may be brought up by *habeas corpus* before a judge to be rendered in discharge of his bail *on a civil action*; and an impressed man may be taken by his bail and rendered, and after *exoneratur* entered on bail-piece, delivered by warden into his former custody. *MS. Case*



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The common *clausum fregit*, with an *etiam in debt*, is sufficient process against bail. Sir Geo. Cooke's Rep. C. B. page 18.

In action on recognizance of bail, writ must be served four days before the return. Barnes 4<sup>th</sup> Edit. 101.

If principal renders himself on or before the return of process served in an action of debt brought upon the recognizance against the bail, all further proceedings against the bail are stopped. Rule, Mich. 1654.

Render of principal before return of second *scire facias*, without notice, does not vitiate the render; but if plaintiff proceeds, bail must pay him additional costs before they are discharged. 6 Mod. 238.

If bail-piece filed without being discharged by filacer or prothonotary, bail remain liable, though defendant be in actual prison. Mod. Cases, 340.

If defendant secretes himself to avoid being rendered by his bail, they, or either of them, may take him wherever they meet with him, even on a Sunday, so they break no locks. When taken, one of the bail must always remain with him (as they cannot depute their right of custody to another without defendant's consent in writing) till he is rendered. If he consents to go to an officer's house till rendered, then bail must take a consent from him as below.

When bail have delivered defendant into the custody of a tipstaff, the tipstaff is answerable if he lets him escape. Bail may render defendant in court, or before a judge at his house or chambers.

In

In the C. B.

A B.  
against  
C. D.

I do consent and agree to remain in the custody of Mr. *William Armstrong*, officer to the sheriff of *Middlesex*, at his house situate in *Carey Street*, near *Lincoln's Inn*, in the county of *Middlesex*, till I am rendered by my bail at the suit of the said A B. the plaintiff. Dated day of 1772.

Witness R. R. at-  
torney for the  
defendant's bail.

C. D. the defendant.

## DECLARATION.

It must contain the complaint or demand of the plaintiff with certainty, in order to enable defendant to make a proper defence.

By 36. of *Edw. 3.* it was ordained, that a count, which is the same with a declaration, should be good, if it hath matter of substance, tho' the terms therein are not perfectly apt and proper.

If the action be in *debt*, *detinue*, *covenant*, *account*, *annuity*, or *replevin*, declaration must be, that defendant *was summoned to answer*, &c.

If in *case*, *trespass*, *trover*, or *ejectment*, then it must be, that defendant *was attached to answer*, &c.

On the common *clausum fregit*, plaintiff may declare thereon in any county, or for any cause of action. *Cases of Practice, C. B. 75.*

On a *clausum fregit*, with an *ac etiam* in *debt*, *case*, or any other action, plaintiff may declare in any county, or for any cause, but then he will lose his bail. *P. R. C. B. 137.*

In a *precipe quod reddat* in *debt*, plaintiff cannot declare but in *debt*, unless declaration is delivered

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delivered by the bye, and even then he must deliver a declaration in the original action.

On attachment of *privilege de placito debiti*, plaintiff must declare as aforesaid, unless by the bye, and even then there must first be a declaration in *debt*, for an attachment is in the nature of a *special original*.

On action brought by husband and wife, husband cannot deliver declaration by the bye at his own suit.

A declaration by the bye cannot be regularly delivered after the term on which writ was returnable.

How to be  
ingrossed for  
delivery.

Ingross same on treble penny stamp paper; there must be no abbreviations, nor must you write on the back; charge ingrossing 4 d. *per sheet*, (72 words making a law sheet) besides duty; nothing charged for the paper. You charge defendant's warrant of attorney 4 d. in *debt*, *detinue*, *trespass*, in all other actions 8 d. and if plaintiff appears for defendant, according to the statute, charge for same 5 s. 10 d. if at suit of an attorney 7 s. 2 d. *Vide Indorsement on Declaration.*

How to de-  
liver or file  
same when  
defendant  
doth or doth  
not appear  
at return of  
writ.

If defendant's attorney hath appeared, plaintiff's attorney must deliver copy of declaration ingrossed as aforesaid; for which defendant's attorney, or his clerk or agent in his absence, must pay as before directed, on same being demanded by plaintiff's attorney. On refusal, plaintiff's attorney may sign judgment; but it is not usual in practice, on delivery of declaration, to insist on payment, tho' plaintiff's attorney may justify signing judgment on refusal. If defendant's attorney's place of abode is unknown, or defendant hath not appeared, it may be left in the prothonotaries office; and notice must be given to defendant, or his attorney, in writing, (for till such notice is given, declaration is

not



not well delivered), or such notice stuck up in the office.

You must give rule to plead when you deliver Rule to or file declaration in office. This rule is given plead. with the proper secondary; pay for same 1s. 10d. in all cases. If defendant's attorney hath appeared, you deliver declaration to him, and demand a plea in writing, within the time of rule to plead, which is a four day rule, inclusive of the day given. When time to plead out, and no plea delivered to plaintiff's attorney, or left in the prothonotaries office, you may sign judgment with the prothonotary. Pleas must be delivered before nine in the evening. Mich. 1 G. 2. Mich. 1654.

If declaration filed with the prothonotary, and notice thereof given to defendant, or his attorney, no demand of plea necessary.

No plea to be received on declaration delivered, or left in office, till same taken out and paid for; and plaintiff may sign judgment, notwithstanding such plea.

In all cases where copy of process is served on defendant, and appearance entered according to statute, copy of declaration must be left in the prothonotaries office, and notice in writing given defendant, or left for him at his last or usual place of abode; or if not to be found, notice to be stuck up in office; and from the time of giving, leaving, or sticking up notice only, declaration is well delivered. If defendant doth not plead within time limited by rule (*a rule to plead having been given with the secondary, and out*), you may sign judgment without any other or further calling for a plea, and give notice of executing your writ of inquiry, in which you will be governed as in your notice of declaration. Rule, Mich. 1 Geo. 2. Delivering declarations, upon appearance, entered according to statute.

Where writ returnable the first, second, or third return, (*as every day in term, except Sunday,*

How to deliver declaration *de bene esse*, on process returnable the first, second, or third return.

day, or non juridical days, is a return day), of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days after such declaration delivered, with notice to plead accordingly, without any imparlance: And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days after the declaration delivered, with notice to plead accordingly, without any imparlance: And that all such declarations may be delivered *de bene esse*. Rule, Trin. 8 Geo. 3.

**Observation.** Declarations delivered as aforesaid, must be delivered four days before the end of the term writ is returnable, exclusive of the day of delivery, or defendant will be intitled to an imparlance till the next term. It is in this case usual for the defendant to take out summons to shew cause why he should not have imparlance.

**When declaration may be delivered *de bene esse*.** On all process returnable any day on or before third return of a term, declaration may be delivered, *de bene esse*, on return day, with notice to plead according to the residence of defendant.

The reason defendant hath eight days in *London* and *Middlesex*, on copy of process served on him, is, that by the late statute he hath eight days after return of writ to enter an appearance; and it would be absurd to sign judgment against him till he is in court, which he is not considered to be till he hath entered an appearance, or it is done for him by plaintiff's attorney. Vide *Common Appearance*.

**Demand of plea before bail perfected, waiver thereof.**

On allailable process, tho' declaration delivered, with four days to plead, plaintiff cannot demand a plea till bail is perfected. The demand is a waiver of plaintiff's exception to bail; and defendant, if he hath given plaintiff notice to

to justify them in court, need not do it after such demand of plea.

Time for appearance being elapsed, and no appearance entered by defendant, a plea demanded after bail perfected, rules to plead in both cases given and out, and no plea put in by defendant, plaintiff's attorney may enter an appearance in the first instance, according to the statute, and sign judgment in either case, without further calling for plea.

Declaration cannot be delivered till time to appear is out, or bail perfected, if done in time; and then must be delivered, with notice to plead within the first four days of the next term.

Rule to plead may be given when declaration delivered, and demand of plea made, at any time before time to plead is out. Plaintiff having entered an appearance for defendant through his neglect, may deliver declaration *by-the-bye* against defendant, in as many actions as he thinks fit, before the end of second term; but no other person can.

If defendant files common or special bail, any creditor of his may deliver a declaration *by-the-bye* against him before the end of the term writ is returnable, on which defendant hath filed common or special bail, without taking out process against such defendant, but not afterwards. Rule, *Mieb. 10 Geo. 2. K. B.* Same practice in this court.

Method of delivering declaration on process returnable any return after the third.

When to deliver declaration by the-bye.

When another creditor besides plaintiff in the action may deliver a declaration by-the-bye.

In the C. B. Between A. B. plaintiff, and C. D. defendant.

Take notice, that there is a declaration filed against you in this cause in the prothonotaries office, in the Inner Temple, London, with the proper officer there, (conditionally) till good bail is put in and perfected, (if special bail) if on common appearance, (say, conditionally till common appearance

Form of notice of declaration filed.



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ance is entered) as of this present (*the term declaration is of*) in an action on the case upon several promises, (*or as the nature of the action is*) to the plaintiff's damage of *l.* (*the damage laid in declaration*) and unless you plead thereto in four days, (*if special bail, or eight days if on a common appearance*) judgment will be entered against you by default, by

Your's, &c.

Dated            day of *March*, 1772.

To Mr. C. defend- }  
ant's attorney. }

R. R. plaintiff's  
attorney.

Form of note  
for rule to  
plead.

*Easter*, 12th *George* the Third.  
A.                                Rule to plead.  
against                        W. Davids,  
B.                                attorney.  
6th *March* 1772.

This note to be left with the proper secondary, when you give rule to plead, who draws up same. Pay for rule 1s. 10d. which rule will be out in four days inclusive of the day given, but judgment must not be signed till the afternoon of the next day. Rule, *Mich* 1654.

A. against B.

Form of demand of plea otherwise judgment, by in writing.

The plaintiff demands a plea in this cause, otherwise judgment, by

Your's, &c.

To Mr. A. defend- }  
ant's attorney. }

W. Davids,  
plaintiff's attorney.

6th *March* 1772.

Plea must be demanded before nine in the evening.

On demand of plea, after rule expired, defendant hath only till the afternoon of next day to plead. If defendant is under an order of court or judge to plead, he must plead by that time,

time, though no rule entered, or plea demanded by plaintiff's attorney.

Easter Term, 12th George the Third.

Dickins.

Form of indorsing back of declaration for delivery.

A }  
against } Declaration.  
B. }

l. s. d.

|  |   |   |    |
|--|---|---|----|
| Copy declaration, Fo.                    | - | - | -  |
| Duty and warrant                         | - | - | -  |
| Entering appearance according to statute | - | - | -  |
| When at the suit of an attorney          | 0 | 5 | 10 |
|  | 0 | 7 | 2  |

If delivered to attorney, it is usual to put his name before notice to plead, (*if left in office need- less*) as notice supplies its place. Indeed in that case, no indorsement of time to plead is necessary, because notice acquaints him of the time when.

A notice to plead is usually indorsed on the back, when declaration delivered *de bene esse*.

Mr. A.

This declaration is delivered conditionally, till special bail is put in and perfected, (*or till a common appearance is entered*) to plead in four or eight days, (*as the case may be.*)

Notice indorsed on back of declaration.

Dated 6th March, 1772.

If not delivered conditionally, and defendant hath an imparlance, then indorse it thus :

The defendant is to plead to this declaration within the first four days of next term, otherwise judgment will be entered against him by default.

Notice when defendant hath imparlance.

If declaration is not delivered within four terms after writ returnable, defendant has a

I

right

right to a whole term to plead, unless cause tied up by injunction or privilege. Rule, *Easter 13 Geo. 2.*

Practical remarks.

All rules to plead must be given within term, or four days after.

An original not necessary to be taken out and filed to ground action, till interlocutory judgment, except against prisoners, and where writ of error brought. *MSS. Cases, C. B.*

All pleadings while on paper are amendable by summons before a judge; and clerical errors after proceedings are recorded. *Barnes 410 Edit. 7.*

Proceedings during the first term may be amended, tho' entered on roll, by summons; if in the second term, there must be an affidavit to ground such amendment; but after *recordatur* entered on verdict, no part of the pleadings can be amended without leave of court on motion. *Gilb. Hist. and Prac. C. P. 144.*

Since statute 11 *W. & M.* court on motion will amend a judgment, either interlocutory or final, from any part of record, so record itself will set it right, it being deemed a misprision of the clerk. *Gilb. Hist. and Prac. of C. P. 165.*

The general rule of this court in amendments, is, that they will amend in favour of judgment. *Ibid. 171.*

On all amendments, plaintiff must give fresh rule to plead, unless given of same term amendment is made. *MSS. Cases.*

In all cases of amendment, if plea pleaded, defendant may plead again, and has two days after amendment and costs paid, to plead *de novo*. *Ibid.*

After second term, and plea pleaded, plaintiff cannot add a new count to declaration, nor amend



amend without leave of court. *Barnes 4to Edit.*  
9, 20.

Defendant on amendment after issue joined, hath his election to take costs, or plead *de novo*. *MSS. Cases.*

In all cases in which there have been no proceedings for four terms, exclusive of the term in which the last proceeding was had, the party who desires to proceed again, shall give a term's notice to the other of such proceeding; and such notice shall be given before the essoign day of the fifth or other subsequent term; and a judge's summons, if no order made thereupon, shall not be deemed a proceeding, but a notice of trial, though afterwards countermanded, shall be deemed a proceeding within the meaning of this rule. *East. 13 Geo. 2.*

On declaration *de bene esse*, if plaintiff gives notice to plead in four days, when defendant is intitled to eight days, though he stays the whole time before he signs judgment, such judgment is irregular. *Barnes 4to 302.*

A declaration may be delivered *de bene esse* on the essoign or return day, or on any day after; the rule to plead cannot be given till first day of term. *Sir Geo. Cooke's Rep. in C. P. 68.*

If defendant served or arrested in London, tho' he resides in the country, he must plead to declaration within the same time as if he resided in town; and notice left at his last lodging in London sufficient. *Ibid. 59. 129.*

On an attachment of privilege in debt, plaintiff cannot deliver a declaration *by-the-bys* in case, till he has declared in debt. *P. R. C. P. 141.*

Plaintiff may discontinue before or after declaration delivered, by taking out rule with the secondary, for which is paid 4s. it must be served on defendant's attorney, and costs paid

## The Modern Practice of the

as taxed; but after issue joined on demurrer rule to discontinue must be on motion.

No notice of declaration to defendant's attorney necessary, when delivered to defendant *de bene esse*. Barnes 4to Edit. 302.

### General Directions for drawing Declarations.

Repetitions of the original writ are to be avoided, and only the nature of the action repeated: Upon an original *clausum fregit*, the place must be mentioned certainly; in covenant, no more of the deed repeated than necessary; in slander, long preambles are to be forborn; on general statutes, the statute is not to be repeated; and in debt on a judgment, the declaration and judgment is not to be repeated, except against executors and administrators. *Mich. 1654.*

In all causes of action *not* on the *case*, the certain day when cause of action arose must be laid in the charge in declaration; but in actions *on* the *case*, you are not obliged to lay in your declaration the certain day when cause of action accrued; it may be laid as done on any day after cause of action, and before writ sued out, *Sundays* excepted. *MSS. Cases.*

If cause of action arises in term, and action commenced the same term, you must not intitle your declaration *Trinity* (or any other) term generally, but *Trinity* (or any other) term, to wit, on next after, &c. in the year, &c. Barnes 4to Edit. 7.

Of laying  
venue.

In all local actions, *venue* must be laid in the county where cause of action arose; and if in ejectment, where the lands or premisses are situate. And by *Stat. 21 Jac. 1.* if action brought against an officer for matter relating to his office,

office, declaration must be laid in county where cause of action arose; but after the expiration of his authority, not necessary.

Actions upon the case, trespass for goods, assault, or imprisonment, arising in any *English* county, must be laid in their proper counties, unless they arise where justices of *nisi prius* seldom come. And because trespass or trover for goods, battery, imprisonment, and slander, must needs be notorious in what county they arise; the attorney knowingly laying them out of the proper county, (*unless in the cases before expressed, or for such other causes as shall be allowed by a judge of the court, and duly made appear to be true*) shall be severely punished. Rule, Mich. 1654.

Although the declaration be delivered seven days before the last day of the preceding term, or after, yet before plea, upon oath made, the *venue* may be changed on motion in the said transitory actions the next term after; and the defendant must plead to the new action as he should have done to the other, without delay. *Venue* may be changed upon oath as before, though defendant come in by exigent. *Ibid.*

*Venue* may be changed in all transitory actions, except in cases of privilege, a promissory note, or bill of exchange. *Barnes 4to Edit.* 491. Practical remarks.

Defendant's putting in plea by mistake after motion to change the *venue*, before the rule made absolute, held no waiver of the rule. *Barnes 4to Edit.* 492.

*Venue* never changed into a palatine county. *Ibid.* 489.

Denied from *Yorkshire* into the city of *York*. *Ibid.*

An attorney, or barrister, cannot change *venue* where joined in action with unprivileged persons.



## The Modern Practice of the

*Venue* cannot be changed after plea pleaded, but may before, though rule to plead be out, *Cases of Pract. C. P.* 159.

It may after order for imparlance, or order for time. *Mich. 16 Geo. 2. Barnes 4to Edit.* 478.

In all transitory actions, court will permit the parties to change the *venue* to the place where the fact done. If plaintiff prays them to change it back again, he must give some evidence of the fact in the place where he prays *venue* may be laid, or he will be *nonprossed*. *Gilb. Hist. & Pract. of the C. P.* 90.

After issue joined, *venue* cannot be changed. *Glb. Hist. & Pract. of C. P.* page 91.

In an action of *scandalum magnatum*, the court will never change the *venue*. *Gilb. Hist. & Pract. of C. P.* page 90.

Attornies, when plaintiffs, if they sue by writ of privilege, have a right to lay *venue* in *Middlesex*, which defendant on motion cannot change. The privilege extends to judge's clerks, serjeants at law, and barristers. *Barnes 4to Edit.* 479, 487, 484.

## Forms of DECLARATIONS.

In the C. B.

Easter Term, the 12th of George the  
Third.

*Dickins.*

Declaration  
in case for  
work and la-  
bour, &c.

*London*, to wit, *J. R.* late of *London*, brick-layer, was attached to answer *W. C.* in a plea of trespass on the case, &c. and whereupon the said *W.* by *R. R.* his attorney, complains, that **WHREAS** the said *Thomas*, on the day of (*some day after cause of action accrued, and before writ sued out*) in the year of our Lord 1772, at *London* aforesaid, to wit, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, was indebted

indebted to the said *William* in the sum of 50*l.* of lawful money of Great Britain, for work and labour by the said *William*, before that time done, performed, and bestowed for the said *Thomas*, and at his special instance and request, and also for divers materials and necessary things used and applied in and about that work, before that time, found and provided by the said *William*, at the like instance of the said *Thomas*, and being so indebted, he the said *Thomas*, in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *William*, to pay him the said sum of money when he should be thereto afterwards requested: AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *William*, at the like special instance and request of the said *Thomas*, had before that time done, performed, and bestowed other work and labour for the said *Thomas*, and had also found and provided divers other materials and necessary things used and employed in and about the said work last mentioned; he the said *Thomas* undertook, and then and there faithfully promised the said *William* to pay him so much money as he therefore reasonably deserved to have; and the said *William* avers, that he therefore reasonably deserved to have of the said *Thomas*, other 50*l.* to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *Thomas* then and there had notice: AND WHEREAS the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *William* in other 50*l.* for divers goods, wares, and merchandizes by the said *William*, before that time sold and delivered to

Count for  
work and la-  
bour done  
and perform-  
ed.

Count for  
goods sold  
and deliver-  
ed.

the

## The Modern Practice of the

the said *Thomas*, at his special instance and request; and being so indebted, he the said *Thomas* in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *William*, to repay him the said sum of money last mentioned, when he should be thereto afterwards requested: **AND WHEREAS** the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *William*, at the like special instance and request of the said *Thomas*, had before that time sold and delivered to the said *Thomas*, divers other goods, wares, and merchandizes, he the said *Thomas* undertook, and then and there faithfully promised the said *William*, to pay him so much money as he therefore reasonably deserved to have; and the said *William* avers, that he therefore reasonably deserved to have of the said *Thomas* other 50*l.* to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *Thomas* then and there had notice: **AND WHEREAS** the said *Thomas* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *William* in other 50*l.* of like lawful money of *Great Britain*, for money by the said *William* before that time laid out, expended, and paid for the said *Thomas*, and at his special instance and request; and being so indebted, he the said *Thomas* in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *William*, to pay him the said sum of money last mentioned, when he should be thereto afterwards requested, yet the said *Thomas*

Count for  
money laid  
out and ex-  
pended.



*Thomas* not regarding his aforesaid several promises and undertakings so by him made in this behalf as aforesaid, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *William* in this respect, hath not yet paid the said several sums of money before mentioned, or any part thereof, to the said *William*, although to do this the said *Thomas* was requested by the said *William* afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at *London* aforesaid, in the parish and ward aforesaid; but he to pay the same to the said *William*, hath hitherto wholly refused, and still doth refuse, whereupon the said *William* says he is injured, and hath damage to the value of 200*l.* and therefore he brings his suit, &c.

If action brought by an executor or administrator, they must be so styled at the beginning of the declaration, and the charge laid in declaration as done by testator, or intestate in his lifetime for defendant, and that defendant promised him payment for same. Averment must be by executor or administrator; and declaration concludes thus, Yet the said *Thomas* not regarding, but contriving, &c. to defraud the said (*mentioning name of testator or intestate*) in his lifetime, and the said *William*, executor or administrator, (*as case may be*) after his death, in this respect, &c. although to do this the said *Thomas* was requested by the said (*here insert name of testator or intestate*) in his lifetime, and afterwards, to wit, on the same day and year last aforesaid, and after his death, by the said *William*, (*executor or administrator*) to wit, on (*here insert some day after death of testator or intestate, and after probate or administration granted, and before action brought*) was requested so to do, but the said *Thomas* hath refused to pay the aforesaid several sums of money to the said

If action brought by an executor or administrator.

in

# The Modern Practice of the

in his lifetime, or to the said *William* since his death, and still refuses to pay the same to the said *William*, to the damage of the said *William*, 200 l. And therefore he brings suit, &c. And the said *William* brings here into court, the letters testamentary of the said deceased, whereby it appears to the court here, that the said *William* is the executor of the last will and testament of the said and thereof hath the administration, &c.

If action brought by administrator, this *profer* in *curia* must be varied accordingly.

In the C. B.

Trinity Term, in the 12th year of the reign of King George the Third.

*Manwaring.*

Declaration  
in case for  
liquors, &c.

*London*, to wit, *G. H.* late of *London*, merchant, was attached to answer unto *R. S.* in a plea of trespass on the case, &c. AND thereupon the said *R.* by *J. W.* her attorney, complains, THAT WHEREAS the said *G.* on the thirty-first day of *May*, in the year of our Lord one thousand seven hundred and seventy-two, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, was indebted to the said *R.* in the sum of twenty pounds of lawful money of *Great Britain*, for divers quantities of ale, beer, and other liquors, by the said *R.* to the said *G.* before that time sold and delivered, and at his special instance and request: And being so indebted, he the said *G.* in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *R.* that he the said *G.* would

well

well and truly pay to the said *R.* the said sum of twenty pounds, whenever after he the said *G.* should be thereunto required: **AND WHEREAS** the said *G.* afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *R.* at the like special instance and request of the said *G.* had before that time sold and delivered to the said *G.* divers other quantities of beer, commonly called small beer, undertook, and then and there faithfully promised the said *R.* that he the said *G.* would well and truly pay to the said *R.* so much money as she therefore reasonably deserved to have, whenever after he the said *G.* should be thereunto requested: **AND** the said *R.* doth aver, that she therefore reasonably deserved to have of the said *G.* other twenty pounds of like lawful money of *Great Britain*, to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *G.* then and there had notice: **AND WHEREAS** the said *G.* afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *R.* in other twenty pounds of like lawful money of *Great Britain*, for divers goods, wares, and merchandizes by the said *R.* to the said *G.* before that time sold and delivered, and at his special instance and request; and being so indebted, he the said *G.* in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *R.* that he the said *G.* would well and truly pay to the said *R.* the said sum of twenty pounds last mentioned, whenever after he the said *G.* should be thereunto requested: **AND WHEREAS** also the said *G.* afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward



ward aforesaid, in consideration that the said *R.* at the like special instance and request of the said *G.* had before that time sold and delivered to the said *G.* divers other goods, wares, and merchandizes, undertook, and then and there faithfully promised the said *R.* to pay her so much money as she therefore reasonably deserved to have, when he the said *G.* should be thereunto afterwards requested: And the said *R.* doth aver, that she therefore reasonably deserved to have of the said *G.* other twenty pounds of like lawful money, to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *G.* then and there had notice: **AND WHEREAS** also the said *G.* afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said *R.* in another sum of twenty pounds of like lawful money, for money by the said *R.* before that time paid, laid out and expended for the said *G.* and at his special instance and request: And being so indebted, he the said *G.* in consideration thereof afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *R.* to pay her the said sum of twenty pounds last mentioned, when he should be thereunto afterwards requested: **NEVERTHELESS**, the said *G.* not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *R.* in this respect, hath not yet paid the said several sums of money, or any part thereof to the said *R.* (although so to do he the said *G.* afterwards, to wit, on the same day and year aforesaid, and often afterwards at *London* aforesaid, in the parish and ward aforesaid, by the

the said *R.* was requested); but to pay the same to the said *R.* he the said *G.* hath hitherto wholly refused, and still doth refuse, whereupon the said *R.* says she is injured, and hath damage to the value of twenty pounds; and therefore she brings her suit, &c.

Easter Term, in the 12th Year of the  
Reign of King George the Third.

Jones.

LONDON, to wit, *C. D.* late of *London* afore-  
said, merchant, was attached to answer to *A. B.* in a plea of trespass on the case, &c. and whereupon the said *A.* by *R. R.* his attorney, complains, THAT WHEREAS on the fifth day of *April*, in the year of our Lord one thousand seven hundred and seventy, at *London* afore-  
said, to wit, in the parish of *St. Mary le Bow*, in the ward of cheap, *E. F.* and *J. K.* according to the usage and custom of merchants, caused to be made a certain policy of assurance, by which policy of assurance they the said *E.* and *J.* as well in their own names, as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part, or in all, did make assurance, and caused themselves, and each and every of them to be insured, lost or not lost, at and from *Dunkirk* to *Marseilles* and *Toulon*, upon any kind of goods and merchandizes whatsoever, loaden or to be loaden aboard the good ship or vessel called the *St. Lewis*, whereof was master under God for that voyage, *Roger Mixen*, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship or the master thereof was or should

Declaration  
in case on a  
policy of in-  
surance ta-  
ken in the  
name of a  
third person,  
declared on  
back thereof  
to be for the  
use of plain-  
tiff.

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be named or called, beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at *Dunkirk* aforesaid, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever should be arrived at *Marseilles* and *Toulon*, and the same there safely landed: And it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance the said goods and merchandizes by agreement were and should be valued at, without farther account to be given by the assured for the same, touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizens, letters of mart and counter mart, surprizals, takings at sea, arrests, restraints and detainments of all Kings, Princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods and merchandizes, or any part thereof: And in case of any loss or misfortune, it should be lawful to the assured, their factors, servants, and assigns, to sue, labour and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum in the said policy of assurance assured: AND it was agreed by them the insurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance before that time made in

*Lombard*



*Lombard street, or in the Royal Exchange, or*  
*elsewhere in London;* and so they the assurers  
were contented, and did by the said policy of  
assurance promise and bind themselves, each one  
for his own part, their heirs, executors, and  
goods to the assured, their executors, admini-  
strators, and assigns, for the true performance  
of the premises, confessing themselves paid the  
consideration due unto them for that assurance  
by the assured, at and after the rate of two and  
one third *per cent.*; and in case of loss, (which  
God forbid) the assured to abate two pounds  
*per cent.* only as by the said policy of assurance  
more fully appears, of which policy of assurance  
the said C. afterwards, to wit, on the said fifth  
day of *April*, in the year aforesaid, at *London*  
aforesaid, in the parish and ward aforesaid, had  
notice, and thereupon the said C. on the  
same day and year, at *London* aforesaid, in the  
parish and ward aforesaid, in consideration that  
the said E. and J. at the special instance and  
request of the said C. paid to the said C. four  
pounds thirteen shillings and fourpence of law-  
ful money of *Great Britain*, for the assurance  
of two hundred pounds upon the premises aforesaid,  
in the said policy of assurance mentioned  
and assured upon themselves, and then and there  
faithfully promised the said C. that all and sin-  
gular the matters and things in the said policy  
of assurance contained on the part and behalf of  
the assurers, should be performed and fulfilled  
assumed upon himself; and then and there faith-  
fully promised the said E. and J. that he the  
said C. would well and truly perform and fulfil  
all and singular the said matters and things in  
the said policy of assurance contained on the part  
and behalf of the assurers to be performed and  
fulfilled, and then and there subscribed the said  
policy of assurance, that he was content with  
the said insurance for the said two hundred

pounds: And the said *A.* in fact says, That the said ship, with the said goods and merchandizes so loaded on board her afterwards, to wit, on the twenty-third day of *June*, in the year of our Lord one thousand seven hundred and seventy-one, performed her said voyage from *Dunkirk* aforesaid in foreign parts, to *Toulon* aforesaid in foreign parts: And the said *A.* further says, That a great quantity of wheat of and belonging to the said *A.* of the value of five hundred pounds, which was on board the said ship in her said voyage, was damaged and spoiled in the said voyage by the perils and dangers of the sea, and other misfortunes: And that the said *E.* and *J.* afterwards, to wit, on the first day of *January*, in the year of our Lord 1772, at *London* aforesaid, in the parish and ward aforesaid, declared in writing on the back of the said policy of assurance, that the said policy of assurance was for account of the said *A.* of which premises the said *C.* afterward, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, had notice from the said *A.* and was then and there requested by the said *A.* to pay one hundred and ninety-six pounds, parcel of the said two hundred pounds, to him the said *A.* four pounds residue thereof being deducted in respect to the said loss and damage: **NEVERTHELESS**, the said *C.* not regarding his said promise and assumption so made in form aforesaid, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *A.* in this respect, has not paid to the said *A.* the said one hundred and ninety-six pounds, or any part thereof, but has hitherto wholly refused, and still refuses to pay the same to the said *A.* to the damage of the said *A.* of two hundred and fifty pounds; and thereupon he brings suit, &c.

In

In the C. B.

Michaelmas Term, in the 12th Year  
of the Reign of King George the  
Third.

Dickins.

London, to wit, C. D. late of Lower Thames Street, London, gentleman, was attached to answer A. B. of a plea of trespass upon the case, &c. AND THEREUPON the said A. by R. R. his attorney, complains, that WHEREAS the said A. now is and during all his lifetime hitherto hath been a good, true, faithful, and honest subject of this kingdom, and never was guilty, nor until the speaking and publishing of the several false, scandalous, defamatory, and malicious words herein aftermentioned, was at any time suspected to be guilty of any kind of larceny or theft, and until the scandal which the said C. hath thrown on the character of the said A. by the false, scandalous, defamatory, and malicious words herein aftermentioned, was a man of unblemished reputation, and by reason of his good name and character, had obtained the esteem of very many good subjects of this kingdom: NEVERTHELESS the said C. well knowing the premisses, but maliciously contriving and intending to scandalize the character and reputation of the said A. and to bring him into disgrace and contempt amongst all his acquaintance, and as much as in him the said C. lay to cause the said A. to suffer the punishment provided by the laws of this kingdom against those who are guilty of theft, on the nineteenth day of September, in the year of our Lord one thousand seven hundred and seventy-



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one, at *London* aforesaid, to wit, in the parish of Saint *Mary le Bow*, in the ward of *Cheap*, in a certain discourse which the said *C.* then and there had with the said *A.* falsely and maliciously said to the said *A.* and of the said *A.* in the presence and hearing of divers good subjects of this kingdom, these false, scandalous, and defamatory words following, (*that is to say*) you (*meaning the said A.*) are a blackguard thief: And the said *C.* of his further malice against the said *A.* and wrongfully and injuriously contriving and intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in a certain other discourse which the said *C.* then and there had with the said *A.* falsely and maliciously said to the said *A.* and of the said *A.* in the presence and hearing of divers other good subjects of this kingdom, these other false, scandalous, and defamatory words following: (*that is to say*) You (*meaning the said A.*) are a scoundrel thief: AND the said *C.* of his farther malice against the said *A.* and wrongfully and injuriously contriving and intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in a certain other discourse which the said *C.* then and there had with the said *A.* falsely and maliciously said to the said *A.* and of the said *A.* in the presence and hearing of divers other good subjects of this kingdom, these other false, scandalous, and defamatory words following: (*that is to say*) You (*meaning the said A.*) are a thief: AND the said *C.* of his farther malice against the said *A.* and wrongfully and injuriously contriving and intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in a certain other discourse which the said *C.* then and

and there had with the said *A.* falsely and maliciously said to the said *A.* and of the said *A.* in the presence and hearing of divers other good subjects of this kingdom, these other false, scandalous, and defamatory words following: (*that is to say*) You (*meaning the said A.*) are an old blackguard thief; by reason of the speaking and publishing of which said false, scandalous and defamatory words by the said *C.* as aforesaid, he the said *A.* is greatly injured in his character and reputation, and is brought into great and undeserved disgrace and infamy with many who are ignorant of his innocence in this respect, to wit, at *London* aforesaid, in the parish and ward aforesaid, to the damage of the said *A.* of two hundred pounds: And therefore he brings suit, &c.

In the *C. B.*

Michaelmas Term, in the 12th Year  
of the Reign of King George the  
Third.

*Dickins.*

LONDON, to wit, *C. D.* late of *London*, Declaration gentleman, was attached to answer unto *A. B.* for an assault in a plea, wherefore with force and arms, he made an assault upon the said *A.* at *London* aforesaid, to wit, in the parish of *St. George, Botolph Lang,* in the ward of *Billinggate,* and beat, bruised, wounded, and ill treated him, so that his life was despaired of, and other wrongs did to him, to the great damage of the said *A.* and against the peace of our Lord the present King, &c. And whereupon the said *A.* by *R. T.* his attorney, complains, that the said *C.* on the nineteenth day of September,  
in

## The Modern Practice of the

in the year of our Lord one thousand seven hundred and seventy-one, with force and arms, to wit, with sticks, staves, clubs and fists, made an assault upon the said *A.* at *London* aforesaid, to wit, in the parish of *St. George, Botolph Lane* aforesaid, in the ward of *Billinggate* aforesaid, and beat, bruised, wounded, and ill treated him, so that his life was greatly despaired of, and other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he says he is injured, and hath sustained damage to the value of two hundred pounds: And therefore he brings suit, &c.

In the *C. B.*

Trinity Term, in the 12th year of the reign of King George the Third.

*Lee.*

Declaration  
in trespass  
and assault  
for crim.  
con.

*Middlesex*, to wit, *W. M.* late of *Westminster*, in the county aforesaid, gentleman, was attached to answer unto *T. B.* of a plea of trespass upon the case, &c. And thereunto the said *T.* by *R. R.* his attorney complains, that WHEREAS the said *William*, on the       day of       dred and seventy-one, at *Westminster*, in the said county of *Middlesex*, with force and arms, made an assault upon *Frances B.* then and still the wife of the said *Thomas*, and seduced, ravished, debauched, lay with, deflowered, and carnally knew the said *Frances*, and took and led away the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas*, and kept and detained the said *Frances*, the said wife of the said *Thomas*, from the said *Thomas*, for a long time, to wit, from the said day of       aforesaid, until the bringing the action of the said *Thomas*, whereby the said



said *Thomas*, during all the time aforesaid there, lost, and was deprived of the benefit and service, and the aid, fellowship, comfort, counsel, and assistance of his said wife; and which he ought, during all that time, to have had and enjoyed with his said wife: AND ALSO, for that the said *William*, on the said day of

in the year of our Lord one thousand seven hundred and seventy-one aforesaid, and on divers other days and times between that day and the day of bringing the action of the said *Thomas*, at *Westminster* aforesaid, in the said county of *Middlesex*, with force and arms, assaulted the said *Frances*, then and still being the said wife of the said *Thomas*, and there beat, seduced, ravished, debauched, deflowered, lay with, and carnally knew her the said *Frances*, and took, led, and carried away the said *Frances*, so being the wife of the said *Thomas*, together with the goods and chattels following, to wit, twenty caps, twenty shifts, twenty pair of stockings, twenty pair of shoes, twenty aprons, twenty petticoats, two pair of stays, twenty handkerchiefs, twenty pair of ruffles, twenty pair of shift sleeves, twenty gowns, six hats, three cloaks, three mantles, three mantlets, three scarves, three bonnets, ten pair of sheets, ten pair of pillowbiers, six table cloths, twenty napkins, twenty towels, and two hundred ounces of wrought plate of the said *Thomas*, of the value of two hundred pounds, then and there found and kept and detained the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas* for a long time, to wit, from thence until the bringing the action of the said *Thomas*, and converted and disposed of the said goods and chattels to his own use, whereby the said *Thomas*, during all the time aforesaid, lost and was deprived of the benefit and service, and the aid, fellowship, comfort, counsel,

## The Modern Practice of the

counsel, society, and assistance of his said wife; and which he ought, during all that time, to have had and enjoyed with his said wife: AND ALSO, for that the said *William*, on the said day of                      in the year aforesaid, with force and arms, assaulted the said *Frances*, then and still being the wife of the said *Thomas*, and took, led, and carried away the said *Frances*, so being the wife of the said *Thomas*, and kept and detained the said *Frances*, so being the wife of the said *Thomas*, from the said *Thomas*, for a long time, to wit, from thence until the bringing the action of the said *Thomas*, whereby the said *Thomas*, during all that time, lost and was deprived of the service, aid, fellowship, comfort, counsel, society, and assistance of his said wife; and which he, during all that time, ought to have had and enjoyed, and otherwise might and would have had and enjoyed with his said wife, and other wrongs, then and there did to the said *Thomas*, to the great damage of the said *Thomas*, and against the peace of our Lord the now King; wherefore he says he is injured, and hath damage to the value of two thousand pounds; therefore he brings his suit, &c.

In the C. B.

Hilary Term, in the 12th year of the reign of King George the Third.

Lee.

Declaration  
in Trover.

*London*, to wit, *J. R.* late of *London*, gentleman, was attached to answer unto *E. P.* widow, of a plea of trespass upon the case, &c. and thereupon the said *E.* by *R. R.* her attorney complains, that WHEREAS the said *E.* on the                      day of                      in the year of                      our

our Lord one thousand seven hundred and seventy-two, at *London* aforesaid, to wit, in the parish of *St. Mary le Bowe*, in the Ward of *Cheape*, was possessed of the several deeds, writings, goods and chattels following, to wit, one parchment deed indented, commonly called an indenture of bargain and sale, bearing date the eighth day of *April*, in the year of our Lord one thousand seven hundred and twenty, made between one *Botler*, of the one part, and one *Knight* of the other part, whereby the said *Botler* bargained and sold to the said *Knight*, divers messuages, lands, tenements, and hereditaments, with the appurtenances, situate, lying, and being in a certain place called *Austin Friars*, in the city of *London*; one other parchment deed indented, commonly called an indenture of mortgage, bearing date the twenty-fifth day of *September*, in the year of our Lord one thousand seven hundred and eighteen, made between the said *Botler* of the one part, and the said *Knight* of the other part, whereby the said *Botler* granted, bargained, and sold to the said *Knight*, divers other messuages, lands, tenements, and hereditaments, with the appurtenances, situate, lying, and being the in said place called *Austin Friars*, by way of mortgage; ten other parchment deeds indented, being title deeds of and belonging to certain other messuages, lands and tenements, with the appurtenances, situate, standing, lying, and being in *Austin Friars* aforesaid; ten other deeds in writing, being title deeds of and belonging to the said last-mentioned messuages, lands, and tenements; ten other parchment deeds; ten other deeds in writing; two certain paper writings, one thereof purporting, to be a brief or abstract of divers pleadings and depositions taken in a certain cause or suit then lately depending in the court

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of



of our Lord the King, of his Chancery at *Westminster*, wherein one *Knight* was the complainant, and one *Stone* was the defendant, and the other of the said paper writings purporting to be the copy of a decree made in the same cause or suit; twenty other pieces of parchment, and one cart-load of paper, of her the said *E.* of the value of five thousand pounds, and being so possessed thereof the said *E.* afterwards, to wit, on the same day of \_\_\_\_\_ in the year of our Lord one thousand seven hundred and seventy-two aforesaid, at *London* aforesaid, in the parish and ward aforesaid, casually lost the said several deed, writings, goods, and chattels, out of her hands and possession, which said several deeds, writings, goods, and chattels afterwards, to wit, on the same day and year last above said, at *London* aforesaid, in the parish and ward aforesaid, came to the hands and possession of the said *J.* who found the same, YET the said *J.* well knowing the said several deeds, writings, goods, and chattels above mentioned, to be the proper deeds, writings, goods, and chattels of the said *E.* and of right to belong and appertain to her, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *E.* in this behalf, hath not yet delivered to the said *E.* the said several deeds, writings, goods, and chattels above mentioned, or any of them, or any part thereof, or of any of them, although often requested so to do, but the said *J.* to deliver the same to her, has hitherto wholly refused, and afterwards, to wit, on the day of \_\_\_\_\_ in the year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, converted and disposed thereof to his own use, to the said *E.* her damage of five thousand

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and pounds, and therefore she brings this suit,  
*&c.*

In the C. B.

Hilary Term, 12th George the Third.

*Jones.*

*Middlesex*, to wit, C. D. of London, iron-Declaration  
monger, otherwise called C. D. of, *&c.* (as on bond.  
*described in bond*) was summoned to answer  
A. B. of a plea that he render to the said A.  
*(the penalty)* of lawful money of Great Bri-  
tain, which he owes to him, and unjustly  
detains, for that, to wit, That whereas the  
said C. on the                      day of                      Date of  
in the 12th year of the reign of our Lord the                      bond.  
now King, at *Westminster* aforesaid, in the county  
aforesaid, by his certain writing obligatory,  
sealed with the seal of the said C. and now here  
shewn to the court of our said Lord the King,  
the date whereof is the day and year aforesaid,  
whereby he acknowledged himself to be held  
and firmly bound to the said A. in the said *(the*  
*penalty)* to be paid to the said A. when he should  
be thereto afterwards required, yet the said C. Breach,  
although often requested, *&c.* the said *(the*  
*penalty)* to the said A. hath not yet paid, but to  
pay the same to the said A. he the said C. hath  
hitherto altogether refused, and still doth refuse,  
wherefore the said A. says he hath received da-  
mage to the value of 20 l. and therefore brings  
this suit, *&c.*

L

In

In the C. B.

Trinity Term, in the 12th year of the  
reign of King George the Third.

*Manwaring.*

Declaration  
on bail-bond  
against one  
of the bail.

*Middlesex*, to wit, *E. B.* late of *London*, gentleman, otherwise called *E. B.* of *London*, gentleman, was summoned to answer *T. M.* and *J. H.* assignees of *J. W.* Esq; and *F. B.* Esq; sheriff of the county of *Middlesex* aforesaid, according to the form of the statute in such case lately made and provided, of a plea that he render to them the said *Thomas* and *John* 40l. of lawful money of *Great Britain*, which he owes and unjustly detains from them: And whereupon the said *T. M.* and *J. H.* by *R. R.* their attorney, say, that whereas they the said *Thomas* and *John*, after the first day of *Trinity Term*, in the year of our Lord one thousand seven hundred and six, to wit, on (time capias was sued out) the day of in the 12th year of the reign of his present Majesty, sued and prosecuted out of the court of our Lord the now King, of the Bench, the said court then and still being held at *Westminster*, in the said county of *Middlesex*, a certain writ of our Lord the now King, called a *testatum capias ad respondendum*, at the suit of the said *Thomas* and *John*, against one *William M.* late of *Westminster* aforesaid, in the said county of *Middlesex*, merchant, directed to the then sheriff of the said county of *Middlesex*,



whereby our said Lord the now King commanded the then sheriff, that he should take the said *William M.* called in the said writ by the name of *William M.* late of *Westminster*, in the county of *Middlesex*, merchant, if he should be found in his the said sheriff's bailiwick, and him safely keep, so that he might have his body before our Lord the King, from *(here insert return of capias)* to answer to the said *Thomas* and *John* of a plea, That whereas, &c. *(here insert declaration in the original action)* to the damage of the said *Thomas* and *John* of 40*l.* &c. and that the said then sheriff should have there that writ, upon which said writ was an indorsement requiring bail from the said *William* for thirty pounds, by virtue of an affidavit of the cause of action of the said *Thomas* and *John* in that behalf, filed of record in the said court of our Lord the now King, of the Bench, according to the form of the statute in such case made and provided, which said writ so indorsed as aforesaid, afterwards and before the return thereof, (that is to say) on                      day of                      in the year of our Lord

within the said sheriff's bailiwick, to wit, at *Westminster* aforesaid, was delivered to the said *J. W.* and *F. B.* then and until, and at and after the return of the said writ, being sheriff of the county of *Middlesex* aforesaid, to be executed in due form of law, by virtue of which said writ, the said *J. W.* and *F. B.* so being sheriff of the county of *Middlesex* as aforesaid, afterwards and before the return of the said writ, to wit, on the said                      day of *(the day of arrest)* in the year last above mentioned, within the said sheriff's bailiwick, to wit, at *Westminster* aforesaid, took and arrested the said *William M.* by his body, and then and there had him in custody

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of the said sheriff, at the suit of the said *Thomas* and *John*, by virtue of the said writ, and the said *William*, by virtue of the said writ, being so arrested, and in custody of the said sheriff, the said sheriff of the said county of *Middlesex*, took bail for the appearance of the said *William*, at the return of the said writ, according to the exigency thereof, and on that occasion, the said *Edward* as bail or surety for the said *William* afterwards, to wit, on the same day of (*date of bail-bond*) in the year last above mentioned, to wit, at *Westminster* aforesaid, by his certain writing obligatory, commonly called a bail-bond, sealed with his seal, and to the court of our said Lord the King, of the Bench, now here shewn, the date whereof is the same day and year last above mentioned, became held and firmly bound to the said *J. W.* and *F. B.* as sheriff of the said county of *Middlesex* aforesaid, by the name of *J. W.* Esq; and *F. B.* Esq; sheriff of the county aforesaid, in the said sum of forty pounds of good and lawful money of *Great Britain*, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, when he the said *Edward* should be thereunto afterwards requested under this condition, that if the said *William M.* did appear before the Lord the King, (*here insert return of writ*) to answer to the said *Thomas* and *John*, of a plea of trespass on the case, to the damage of the said *Thomas* and *John* of forty pounds, then the said obligation to be void and of no force, otherwise to stand and remain in full force, vigour, and effect, as by the said obligation and condition thereof, relation being thereunto had, will more fully and at large appear, and the said *Thomas* and *John*, assignees as aforesaid, further say, that the said *William* did not appear before the Lord the King at *Westminster*,

*minster, (here insert return of writ,) mentioned* in the said condition, according to the tenor thereof, whereby the said writing obligatory became forfeited, and the aforesaid *J. W.* and *F. B.* so being sheriff of the county of *Middlesex* as aforesaid, afterwards and before the payment of the said forty pounds, contained in the said writing obligatory, or of any part thereof, to wit, on                      day of

in the year 1772, (*viz. date of assignment*) to wit, at *Westminster* aforesaid, at the request and costs of the said *Thomas* and *John*, the plaintiffs in that suit, according to the form of the statute, in such case made and provided in due manner, assigned to the said *Thomas* and *John*, the said writing obligatory, by then and there indorsing the said assignment on the said writing obligatory, and attesting the same under the seal of office of the said sheriff of the county of *Middlesex* aforesaid, in the presence of two credible witnesses, as by the said assignment indorsed on the said writing obligatory, and duly stamped before the bringing the action of the said *Thomas* and *John*, and to the said court of our said Lord the King, of the Bench, now here shewn, the date whereof is the same day and year last aforesaid, more fully appears, by reason of which said premises, and by force of the statute in such case made and provided, an action hath accrued to the said *Thomas* and *John*, assignees of the aforesaid *J. W.* and *F. B.* sheriff of the county of *Middlesex* aforesaid, to demand and have of the said *Edward*, the said forty pounds above demanded, yet the said *Edward* (although often required) hath not yet rendered the said forty pounds, or any part thereof, to the said *J. W.* and *F. B.* before the said assignment, or to the said *Thomas* and *John*, since the said assignment, or to either of them, but he to do this hath hitherto wholly refused,



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and still refuses to render the same, or any part thereof, to the said *Thomas* and *John* assignees as aforesaid, to the said *Thomas* and *John*, assignees as aforesaid, their damage of forty pounds; and therefore they bring their suit, &c.

Same declaration against principal, leaving out the words *as bail or surety for the said William*.

In the *C. B.*

Michaelmas Term, in the 12th year  
of the reign of King George the Third.

*Dickins.*

Declaration  
on a judg-  
ment reco-  
vered.

*Middlesex*, to wit, *C. D.* late of *London*, taylor, was summoned to answer unto *A. B.* of a plea that he render to him sixteen pounds of lawful money of *Great Britain*, which he oweth to and unjustly detains from him, &c. And whereupon the said *A.* by *R. R.* his attorney, saith, That WHEREAS the said *A.* heretofore, that is to say, in *Trinity Term*, in the eighth year of the reign of his present Majesty King *George* the Third, in his said Majesty's court before Sir *William De Grey*, Knight, and his companions, then his said Majesty's justices of the Bench here at *Westminster*, in the county of *Middlesex*, by the consideration of the same court, recovered against the said *C.* the said sixteen pounds which were adjudged to the said *A.* for his damages which he had sustained, as well by occasion of the not performing of certain promises and undertakings then lately made

made by the said C. to the said A. as for his costs and charges by him about his suit in that behalf expended, whereof the said C. is convicted, as by the record and proceedings thereof now remaining in his said Majesty's court here, to wit, at *Westminster* aforesaid, in the said county of *Middlesex*, may appear, which said judgment still remains in its full force, strength, and effect, not reversed, vacated, annulled, discharged, or satisfied, and the said A. hath not as yet obtained any execution of his aforesaid judgment, whereby an action hath accrued to the said A. to demand and have of the said C. the said sixteen pounds, yet the said C. (although often requested, &c.) hath not as yet paid the said sixteen pounds, or any part thereof, to the said A. but he to pay the same, or any part thereof, to the said A. hath hitherto wholly refused, and still refuses so to do to the said A. his damage of twenty pounds; and therefore he brings his suit, &c.

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### *Directions for paying Money into Court.*

If the sum to be paid in is under five pounds, it is done by motion in the treasury, without counsel; if above that sum, you pay a serjeant 10 s. 6 d. to move it, and give him a note of the money you intend to pay in, court directs rule thereon. In both cases, it must be done before plea delivered; pay the money moved to be paid in to prothonotary, and draw up rule thereon; pay for rule 5 s. 6 d. If the money you moved to pay in is under 10 l, prothonotary's

tary's fee is 2 s. for every greater or lesser sum than 100 l. ; after the rate of 20 s. for every 100 l.

After money paid in, make copy of rule, and serve same on plaintiff's attorney, and deliver him at same time plea, *general issue* ; if he accepts the money paid, in full discharge of the suit, he is intitled to costs till time money was paid in, to obtain which, he must get prothonotary's appointment on rule ; serve same on defendant's attorney, and tax costs. Rule, *Mich. 7 Geo. 3.*

It is very necessary for defendant to take care that he pays sufficient into court, as his costs in the event of suit depend wholly on this circumstance. *Ibid.*

If plaintiff will not accept the sum paid into court in full discharge of his demand, he may receive same in part of his demand, and proceed to trial ; but if he does not recover above that sum, he will be nonsuited, and must pay costs to defendant. *Ibid.*

In debt on bond for payment of money by installments, money cannot be brought in on the common rule, but by special motion. *Barnes 4to Edit. 286.*

Practical remarks.

In covenant, where a breach is assigned for a sum certain, court will permit such sum to be brought into court. *Barnes 4to Edit. 284.*

If plaintiff accepts of the money paid into court, he hath his costs to that time. *Barnes 4to Edit. 286.*

Court will not permit defendant to pay money into court, and plead as to some of the counts in declaration, and demur as to the rest. *Sir Geo. Cooke's Cases, C. P. page 48.*

At suit of an executor, defendant may pay money into court. *Barnes 4to Edit. 289.*

Defendant, when executor or administrator paying money into court, may, if plaintiff is non-



non-suited, take the same out again. Sir Geo. Coke's Cases, C. P. Mich. 11 Ann.

In action on bond, payable by installments, court will stay proceedings on paying the installment due, and costs Barnes 4to Edit. 288.

Money may be paid into court on the common rule, after rule is out, at any time before plea pleaded, but not after it, without plaintiff's consent. Barnes 4to Edit. 279, 349.

In paying money into court, the general maxim is to favour plaintiff in the suit; but this rule is dispensed with when the neglect of defendant arises from accident. Pract. Reg. C. P. 262.

In *trover*, on motion court will order the goods, or the value thereof, to be brought into court. Report and Cases of Practice, C. P. 59.

In debt for rent, defendant may pay money into court, and plead *nil debet*. Barnes 4to Edit. 280.

Money brought into court, cannot afterwards be taken out by defendant, though he gains a verdict, nor in case of his death by his executors. Barnes 4to Edit. 279. Pract. Reg. C. P. 250.

Court will permit defendant to withdraw general issue on bringing money into court and repleading same, without prejudice to plaintiff's suit. Barnes 4to Edit. 289.

## O Y E R.

If plaintiff in declaration makes a *proferit in curia* of any deed, writing, &c. defendant may pray *oyer* thereof, and has the same time to plead after *oyer* delivered as before he demanded same. If defendant in his plea makes a *proferit in curia* of any deed, &c. plaintiff is intitled to *oyer* thereof, and has same time to reply as before he demanded same, plaintiff and defendant are to

to pay each other as case may be, 4d. a sheet, besides duty for all copies of deeds, &c. brought into court as aforesaid.

Practical remarks.

Court will not overturn the established practice of demanding *oyer* after time to plead is out, however reasonable such demand may be. *Barnes 4to Edit.* 327.

*Oyer* should be demanded before imparlance. *Gilb. Hist. and Pract. C. P.* 184.

If defendant prays *oyer*, it will be considered by court as part of his plea, whether same is set out in such plea or not. *Barnes 4to Edit.* 327.

Defendant is intitled to same time to plead after *oyer* given, as he had when *oyer* demanded. *Sir Geo. Cooke's Cases, C. P.* page 81, 143.

## P L E A S.

General issue.

Write *general issue* on a treble penny sheet of stamped paper, and deliver it to plaintiff's attorney; if he cannot be found, or refuses to accept same, leave it in the prothonotary's office. *Rule, Mich.* 1654.

Non est factum on bond.

And the said C. by R. R. his attorney, comes and defends the wrong and injury, when, &c. and says that he ought not to be charged with the said debt by virtue of the said writing obligatory, because he says that that writing is *not his deed*, and of this he puts himself upon the country.

By an executor or administrator.

And says, That he ought not to be charged with the said debt, by virtue of the said writing, because he says that the said writing is *not the deed of the said I. T. (the testator)* and of this he puts himself upon the country.

Nil debet upon debt on contract.

And says, *That he does not owe* to the said A. B. the aforesaid fifty pounds, nor any part thereof, in manner and form as the said A. B. hath above declared against him, and of this he puts himself upon the country.

And

And says, *That he the said A. does not owe to* Nil debet  
our said Lord the King, and the said C. D. who upon a qui  
as well, &c. the said sixty pounds, or any part tam action,  
thereof, in manner and form as the said C. D.  
who as well, &c. hath above declared against  
him, and of this he puts himself upon the  
country.

And says, *That he does not detain from the said* Non detinet  
E. F. the said one hundred pounds, or any part upon action  
thereof, in manner and form as the said E. F. of detinue in  
above complains against him, and of this he debt.  
puts himself upon the country.

And says, *He does not detain from the said* Non detinet  
G. H. the goods and chattels in the declaration in case.  
mentioned, or any part thereof, in manner and  
form as the said G. H. above complains against  
him, and of this, &c.

And saith, *That he does not owe to the said* Nil debet nec  
I. K. the said twenty pounds, nor any part detinet.  
thereof, in manner and form as the said I. K.  
hath above declared against him, nor doth he  
detain from the aforesaid I. K. the goods and  
chattels (or as case may be) aforesaid, in manner  
and form as the said I. K. has above declared  
against him, and of this, &c.

And says, *That he did not break the said cove-* Non in fregit  
nant (or covenants, as case may be, or any one of conventio-  
them) in the said declaration above specified, in nem.  
manner and form as the said L. M. above thereof  
complains against him, and of this, &c.

And says, *That he did not undertake and pro-* Non assump-  
mise, in manner and form as the said N. O. sit.  
above complains against him, and of this, &c.

And says, *That the said P. Q. the testator* Non assump-  
in his lifetime, did not undertake and promise, sit by execu-  
in manner and form as the said R. S. above tor or admi-  
complains against him, and of this, &c. nistrator.

And says, *That he is not guilty of the premises* Not guilty  
above laid to his charge, as the said T. V. above in case.  
complains against him, and of this, &c.

And



Not guilty  
in trespass.

And says, *That he is not guilty* of the said trespass, and of this, &c.

In trespass  
and assault.

And says, *That he is not guilty* of the said trespass and assault, &c.

### Special Pleas

Are divided into two kinds, *viz.* pleas in abatement, and pleas in bar. The order of pleading is first to the jurisdiction of the court: Secondly, to the person of the plaintiff: Thirdly, to the count or declaration: Fourthly, to the writ: Fifthly, to the action of the writ: And sixthly, in bar of the action itself. Any of these may be used as occasion may require.

Plea in a-  
batement.

A plea in *abatement* is temporary, and often dilatory; it is not to destroy the plaintiff's action, but only to stop the cause a while, till some defect removed, as a *misnomer*, to cure which, plaintiff must enter up a discontinuance by *nil capiat per breve* on the roll, and then may bring a new action in defendant's right name.

Plea in bar.

The plea in *bar* is an objection to plaintiff's action, and goes to the matter in demand, shewing why plaintiff ought not to have same, and is either peremptory and perpetual, as when defendant pleads a general release, which destroys plaintiff's action for ever; or temporary, and bars only for a time, as the plea of *plene administravit*, which is a good plea in bar until effects come into executor's hands.

All special pleas are to be signed by a serjeant; the usual fee is 10s. 6d. and if dilatory, an affidavit of the truth must be annexed, except these following. *Comperuit ad diem, son assault, plene administravit, reins per descent, nul tiel record, per minas, solvit ad diem, ne unguet*  
executor

*executor infra ætatem, and per duces.*

London, to wit, And the said *John Thomas*, Plea of mis-  
who is sued by the name of *William Thomas*, by nomer.  
*A. B.* his attorney, comes and pleads that he  
was baptized by the name *John*, to wit, at  
London aforesaid, in the parish and ward aforesaid, and by the name of *John* hath always  
hitherto since his baptisim been called and  
known without this, that he the said *John* now  
is, or at the time of the suing forth the origi-  
nal writ of the said *Adam Williams* was, or  
ever before had been, or ever since hath been  
called or known by the christian name of *Wil-*  
*liam*, as by the writ and declaration of the said  
*Adam Williams* is above supposed, and this he  
the said *John* is ready to verify; wherefore  
he prays judgment of the said writ, and that  
the same may be quashed, &c.

*J. Burland.*

And the said *John*, who is under the age of Plea of in-  
twenty-one years, by *J. A.* his guardian, by fency by  
the court of the Lord the King, now here spe- guardian a-  
cially admitted, comes and defends the force gainst action  
and injury when, &c. and prays judgment of brought by  
the writ aforesaid, because he says that he the infant with-  
said *John*, on the day of the suing forth the origi- out guardian  
nal writ aforesaid, was and yet is under the age or next  
of twenty-one years, to wit, of the age of nine- friend.  
teen years, and no more, to wit, at London  
aforesaid, in the parish and ward aforesaid, and  
that the said *James* prosecutes his writ against  
the said *John*, neither by his next friend nor by  
his guardian, and that this he is ready to verify;  
wherefore he prays judgment of the writ aforesaid, and that the same may be quashed, &c.

*J. Eyre.*

M

And

Plea of a  
judgment re-  
covered in  
the K. B.

And the said *William Holdsworth*, by *Carey Bayly* his attorney, comes and defends the wrong and injury when, &c. and saith that the said *Robert Baldwin* ought not to have his afore-said action thereof maintained against the said *William Holdsworth*, because he says that after the making the several promises in the said declaration mentioned, that is to say, in *Hilary Term*, in the 12th year of the reign of our Lord the now King, the said *Robert Baldwin* impleaded the said *William Holdsworth* in the court of our Lord the King, before the King himself at *Westminster*, in a certain plea of trespass on the case, to the said *Robert Baldwin*, his damage of 20l. upon the very same identical promises and undertakings in the said declaration mentioned, and such proceedings were had in that plea, that the said *Robert Baldwin* afterwards, that is to say, in the very same *Hilary Term*, in the 12th year aforesaid, by the consideration and judgment of the same court, recovered against the said *William Holdsworth* 20l. as well for his damages by him sustained on occasion of the non-performance of the same identical promises and undertakings in the said declaration mentioned, as for his costs and charges by him expended in and about his suit in that behalf, whereof the said *William Holdsworth* was convicted, as by the record and proceedings thereof still remaining in the said court of our Lord the King, before the King himself, at *Westminster* aforesaid, more fully and at large appears, which said judgment still remains in its full force, strength, and effect, not in the least reversed, annulled, or made void; and this the said *William Holdsworth* is ready to verify by the record thereof; wherefore he prays judgment, if the said *Robert Baldwin* ought to have or maintain his afore-said action thereof against him, &c.

W. Davy.

And



And the said *B.* by *C. B.* his attorney, comes Plea plene  
and defends the wrong and injury when, &c. admin. tra-  
and says that the said *A.* ought not to have or vit.  
maintain his said action thereof against him  
the said *B.* because he says that the said *B.* hath  
fully administered all and singular the goods and  
chattels which were the goods and chattels of  
the said *E. F.* at the time of his death, in his  
hands to be administered; and that he the said *B.*  
has not, nor at the time of suing forth the origi-  
nal writ aforesaid, or at any time since, had any  
goods or chattels which were the goods and chat-  
tels of the said *E. F.* at the time of his death, in  
his hands to be administered, whereby the said *A.*  
might have been satisfied of the damages afore-  
said, or any part thereof, and this he the said  
*A.* is ready to verify, wherefore, &c.

And the said *B.* by *C. B.* his attorney, comes Plea son af-  
and defends the force and injury when, &c. fault.  
and as to the coming with force and arms, or  
whatsoever that is against the peace of our Lord  
the now King, the said *B.* says that he is not  
guilty thereof; and of this he puts himself  
upon the country, and the said *A.* likewise,  
&c. And as to the residue of the trespass above  
supposed to be done, the said *B.* says that the  
said *A.* ought not to have or maintain his said  
action thereof against him, because he says that  
the said *A.* at the said time in which the said  
trespass is above supposed to be done at *Hert-*  
*ford*, in the county aforesaid, with force and  
arms, &c. made an assault upon the said *B.*  
and then and there would have beaten, wounded,  
and ill-treated the said *B.* if he the said *B.* had not  
then and there presently defended himself against  
the said *A.* whereupon the said *B.* then and  
there defended himself against the said *A.* and  
so the said *B.* says, that the mischief or damage,  
if any then and there happened to the said *A.*

it was on the proper assault of the said *A.* and in the defence of the said *B.* and this the said *B.* is ready to verifify, wherefore, &c.

Plea compe-  
ruit ad diem  
to bail-bond.

And the said *B.* by *C. B.* his attorney, comes and defends the wrong and injury when, &c. and prays *oyer* of the said writing obligatory, and it is read to him, &c. he also prays *oyer* of the condition of the said writing, and it is read to him in these words, to wit, The condition of this obligation is such, to wit, &c. which being read and heard, the said *B.* says, that they the said *A.* and *H.* ought not to have or maintain their said action against him, because he says, that after the making the said writing obligatory, and before the day of suing forth the original writ of the said *A.* and *H.* to wit, on *Wednesday* next after fifteen days of *St. Hilary* next ensuing the date of the said writing obligatory in the said condition above named, he the said *B.* in the said condition above named, appeared before our Lord the King at *Westminster*, to answer the said *A.* and *H.* of the said plea of trespass, and also to the writ of the said *A.* and *H.* against the said *B.* for 80*l.* on promise according to the form and effect of the said condition: And this he is ready to verifify by the record of that appearance remaining in the court of our said Lord the King, of the bench, wherefore, &c.

Plea non as-  
sumpsit, &  
non assump-  
sit infra sex  
annos, and a  
release from  
drawee be-  
fore note in-  
dorsed by  
drawee to  
indorsee.

And the said *Joseph* by *A. B.* his attorney, comes and defends the wrong and injury when, &c. and says that he did not undertake and promise, in manner and form as the said *Thomas* hath above complained against him, and of this he puts himself upon the country: And for further plea in this behalf, by leave of the court here for this purpose, first had and obtained according to the form of the statute in such case made

made and provided, the said *Joseph* says that the said *Thomas* ought not to have or maintain his said action thereof against him, because he says that the said *Joseph* did not any time within six years, next before the suing forth the original writ of the said *Thomas*, undertake and promise in manner and form as the said *Thomas* hath above complained against him, and this he is ready to verify, wherefore he prays judgment, if the said *Thomas* ought to have or maintain his said action thereof against him, and for further plea in this behalf, by like leave of the court here for this purpose, first had and obtained according to the form of the statute in such case made and provided, the said *Joseph* says, that the said *Thomas* ought not to have or maintain his said action thereof against the said *Joseph*, because he says that the said several causes of action in the said declaration mentioned, did not, nor did any or either of them accrue to the said *Thomas* at any time within six years, next before the suing forth the said original writ of the said *Thomas*, and this he is ready to verify, wherefore, &c. and for further plea as to the said promise and undertaking, in the said declaration first mentioned, he the said *Joseph* by like leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said *Thomas* ought not to have or maintain his said action thereof against the said *Joseph*, because he says that after the making of the said promissory note in the said declaration mentioned, and before any indorsement was made thereof by the said *Mary Rogers*, to wit, on the 11th day of *March*, in the year of our Lord 1770, she the said *Mary*, at *Westminster*, in the county of *Middlesex*, by her certain deed poll then and there made by her the said *Mary*, to the said *Joseph*, (which said deed poll sealed with the



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seal of the said *Mary*, he the said *Joseph* now brings into court here, the date whereof is the same day and year last aforesaid) did remise, release, and for ever quit claim unto the said *Joseph*, by the name of Lieutenant *Joseph Griffiths*, of his Majesty's navy, his heirs, executors, and administrators, all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings, obligatory debts, duties, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and equity, or otherwise howsoever, which against the said *Joseph*, she the said *Mary* ever had, and which her heirs, executors, or administrators should or might thereafter claim, challenge, or demand, for or by reason or means of any matter, cause, or thing whatsoever, from the beginning of the world unto the day of the date of the said deed poll, as by the said deed poll, relation being thereto had, may more fully appear: And the said *Joseph* further says, That at the time of the making the said deed poll by the said *Mary*, the said promissory note mentioned at *Westminster* aforesaid, was in the custody and possession of the said *Mary* not indorsed by her, and this the said *Joseph* is ready to verify, wherefore, &c.

*J. Burland.*

Plea of tender.

And the said *John*, by *C. B.* his attorney, comes and defends the force and injury when, &c. and as to the first promise and assumption in the said declaration mentioned, except as to 4l. 10s. part of the said sum of 40l. 6s. therein mentioned; and as to all the other promises and assumptions mentioned in the said declaration, the said *John* saith he did not assume upon himself in manner and form as the said *Thomas* above thereof complains against him, and of this he puts

puts himself upon the country; and as to 4l. 10s. part of the said sum of forty pounds six shillings, in the said first promise and assumption in the said declaration mentioned, and as to the said first promise and assumption in that behalf, the said *John* saith, that the said *Thomas* ought not to have or recover against him any more damages by reason of the not paying thereof, than the said 4l. 10s. because he saith that after the said first promise and assumption above supposed to be made, and before the suing out the original writ of the said *Thomas*, to wit, on the 12th day of *January*, in the year of our Lord 1772, at *Westminster* aforesaid, he the said *John* was ready, and offered to pay, and tendered to the said *Thomas* the said 4l. 10s. which the said *Thomas* then and then there refused to accept from the said *John*: And the said *John* further saith, that from the time of making the said first promise and assumption hitherto, he hath been always ready, and still is ready to pay the said 4l. 10s. to the said *Thomas*, and now brings the said 4l. 10s. into court, here ready to be paid to the said *Thomas*, if he will accept the same; and this he is ready to verify: Wherefore he prays judgment, if the said *Thomas* ought to have his said action maintained against the said *John*, or to have or recover any more or greater damages than the said 4l. 10s. in this behalf, &c.

*W. Davy.*

*Note,—The money tendered must be paid to the prothonotary when plea is left, and his receipt for same wrote in the margin of plea.*

Tender cannot be pleaded after defendant Remark, has obtained an order for time to plead on pleading an issuable plea. *Sir Geo. Cooke's Rep.*  
334.

DE MUR-

## D E M U R R E R S

Are of two kinds, *viz.* general or special; a general demurrer is in the nature of a dilatory plea, and generally brought by defendant to gain time; it is not to be signed by a serjeant: A special demurrer must, and also must contain the special matter in declaration to which defendant demurs.

General demurrer.

When, &c. and prays judgment of the said declaration, because he saith, That the said declaration, and the matters therein contained, are not sufficient in law for the said *John* to have or maintain his said action thereof against him the said *Richard*, to which said declaration the said *Richard* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify, wherefore, for want of a sufficient declaration in this behalf, the said *Richard* prays judgment thereof, and that the said declaration may be quashed, &c.

Special demurrer.

And the said *G.* says, that the said plea of the said *B.* by him above pleaded, in reply to the said plea of the said *G.* by him above pleaded in bar, and the matters therein contained are not sufficient in law for the said *B.* to have or maintain his aforesaid action thereof against him the said *G.* to which said plea so pleaded in reply, in manner and form as the same is above pleaded and set forth, he the said *G.* is not under any necessity, or in any wise bound by the laws of this realm to answer; and this the said *G.* is ready to verify; wherefore, for want of a sufficient replication in this behalf, he the said *G.* prays judgment, and that the said *B.* may be barred



barred from having and maintaining his afore-said action thereof against him: And for causes of demurrer in law, according to the form of the statute in such case made and provided, he the said G. sets down and shews to the court here these causes following, to wit, for that the said B. hath not positively in or by his said replication alledged, that there is not now any such record as in the said plea of the said G. mentioned, and for that the said replication is in many other respects uncertain, insufficient, and informal, &c.

*J. Foster.*

A demurrer is not an issuable plea within the Remark. meaning of a judge's order for rejoining issuably, but will be permitted under particular circumstances. *Barnes 4to Edit. 168.*

Paper-books are not made up in this court on special pleas and demurrers, as in the *K. B.*; defendant's attorney delivers his special plea or demurrer to plaintiff's attorney, who makes up the paper-book himself in same manner as on a common issue for trial, *mutatis mutandis*; it is wrote on treble penny paper copywise, which he delivers to defendant's attorney, who must pay him for same immediately 4 d. *per* sheet, besides duty, and also entering his pleadings and warrant of attorney; or in default, plaintiff may sign judgment, rules to reply, rejoin, &c. are given with the secondary of the prothonotary where suit commenced; pay for rules 1 s. 10 d. each, and demand a replication, rejoinder, &c. in writing. These rules may be given within sixteen days after term to the party required to do the act; if not complied with, judgment interlocutory, or final, as the case may be, may be signed without other or further calling on the party required to do the act.

Directions  
for making  
up paper-  
books.

When

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When issue is joined on a special plea or demurrer, plaintiff's attorney enters the whole proceedings on the roll, and delivers it to the secondary, and gets a serjeant to move for a *consilium*; pay him 10s. 6d. moving same. Draw up rule for *consilium* with secondary; pay for same 5s. and enter issue in prothonotary's book for argument.

Delivering  
issue-books  
by whom,  
and how.

Copies of these books must be delivered by plaintiff's attorney, wrote on copy-paper, to the Chief Justice and the other judges, one week before the day appointed for argument, which cannot be on the four first or four last days of a term, nor will any argument be allowed by the court till all the books are delivered. You pay the judge's clerk with each book 2s. Rule, *Easter 27 Car. 2. C. B.*

If defendant's attorney doth not pay plaintiff's attorney for two of the said books, two days at least before the day of argument, court will not permit him to be heard, unless the said books are paid for. Rule, *Mich. 6 Geo. 2. C. B.*

The books delivered to the judges must have the serjeant's name who signed the respective pleadings, number roll, and day of argument indorsed on the back of each. Rule, *Trin. 17 & 18 Geo. 2. C. B.*

Plaintiff's attorney pays prothonotary 8d. *per folio* for the whole entries of issue-book, and defendant must pay plaintiff's attorney 8d. *per sheet* for the pleadings on his part, and 4d. *per sheet* for plaintiff's entries, on the paper-book being tendered to him by plaintiff's attorney, or in default, plaintiff's attorney may sign judgment.

Special pleas, and general and special demurrers must be ingrossed on treble penny stamped paper, and delivered to plaintiff's attorney, who in this court makes up the same as aforesaid.

All

All special pleadings in this court, except those before excepted, must be signed by a serjeant before they are delivered, or plaintiff may sign judgment, notwithstanding same are delivered in due time.

A general demurrer is not signed by a serjeant.

No dilatory plea to be received, unless supported by affidavit of the truth thereof, or sufficient reasons given to the court to believe the truth of such plea. *Stat. 4 & 5 Ann.*

If plaintiff's attorney cannot be found, or refuses to receive plea, same may be filed with the prothonotary, and plaintiff's attorney must take same out of the office and make up issue. Rule, *Mich. 1654. C. B.*

If defendant delivers plaintiff a general demurrer to declaration, plaintiff adds a joinder in demurrer, and makes a copy on treble penny stamp paper of declaration, demurrer, and joinder, and delivers paper-book so made up to defendant's attorney; for which he must pay plaintiff's attorney the same *per sheet* as on special demurrer, who then makes up paper-book, and proceeds to judgment as before. If book not paid for upon delivery, and demand of the paper money, sign interlocutory judgment, and give notice of executing writ of inquiry. *Observations.*

If demurrer contains real ground, it is a temporary bar to action, and plaintiff must take out summons before a judge to amend declaration; if not, plaintiff makes up paper book, and proceeds to judgment as before directed on special pleas and demurrers. Rule, *Mich. 1654. C. B.*

If cause has continued four terms without prosecution before issue joined, a term's notice is required to do all the above matters, unless cause staid by injunction or privilege. Rule, *Easter 13 Geo. 2. C. B.*



A copy of the rules to reply, rejoin, &c. must be served on attorney required to do the act, with title of the term on the top. These rules may be given any time within term, or sixteen days after term ends.

In this court, you cannot as in the *K. B.* strike out plaintiff's joinder in demurrer, and give plaintiff the general issue on the back of paper-book, when you return same to plaintiff's attorney; nor will court on motion, where a trial hath been lost, permit defendant to withdraw his demurrer, in order to plead the general issue.

Plea not delivered to plaintiff's attorney in time, so that paper-book may be delivered in four days after term; yet if delivered by plaintiff's attorney within eight days after term, defendant must receive it, and return it in four days, according to rule, or judgment may be signed against him. But if after the eight days, defendant need not return book till within the first four days of the following term. If it be an issue to be tried at the assizes, defendant must return paper-book within four days after delivery; pay for entries and join in the special issue, and take notice of trial, or plaintiff may sign interlocutory judgment the same as if defendant had not pleaded at all. If plaintiff's attorney receives paper-book after the usual time, he cannot afterwards sign judgment.

On issues in fact, the four days are exclusive; and on demurrers on issues in law, inclusive.

Practical remarks.

Where plaintiff concludes *ad patriam*, and gives notice of trial on the back of paper-book, if defendant does not join issue before the rule is out in such case, after interlocutory judgment, defendant's attorney shall accept of notice of inquiry from the time of giving such notice of trial. Rule, *Hilary 6 Geo. 1.*

If

If defendant demurs to plaintiff's declaration, defendant's attorney shall be obliged to accept of notice inquiry on the back of the joinder in demurrer; and if he pleads such a dilatory plea, that plaintiff is forced to demur to, he shall accept notice of inquiry on the back of demurrer. Rule, *Trinity 10 Geo. 1. C. B.*

If defendant bound by order of judge to plead issuably, he may demur to plaintiff's replication.

To plead several matters, no affidavit necessary, unless the same are contradictory, and tend to delay justice. You draw up rule with secondary; pay for same 5 s.; serve copy on plaintiff's attorney; and it is usual at the same time to deliver him the plea. *MSS. Cases, C. B.*

When defendant has pleaded an issuable plea, and plaintiff don't enter issue the same term, defendant may waive same, and plead anew, or demur within the first four days of subsequent term, unless general issue. If former judgment of same court pleaded, plaintiff has a right to demand term and number roll; and till given, plea not good.

The statute not necessary to be recited, in pleading a general statute. Rule, *Mich. 1654. C. B.*

The reversal of an outlawry cannot be pleaded twice to the same action. *Ibid*

Plea of outlawry cannot be pleaded but *sub fide sigilli*; yet if plaintiff signs judgment without leave of court, same will be set aside. *Sir Geo. Cooke's Cases C. P. page 92.*

Infants cannot plead till admitted by guardian, and then must plead their infancy, to avoid an act done by them. *MSS. Cases, C. B.*

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Plea of *tender* not an issuable plea within the meaning of a judge's order, and plaintiff may sign judgment. *Cases of Pract. C. P.* 134.

After money accepted by plaintiff on tender, he cannot proceed for damages. 2 *Ld. Raym.* 774.

If defendant pleads a tender, and plaintiff makes up issue, with a general memorandum, so as to refer to a day prior to such tender, court of Chancery on affidavit and motion that tender was made before writ taken out, will alter original according to the fact, that defendant may have the benefit of his tender. *Barnes 4to Edit.* 357.

On original, defendant on *oyer* pleading in abatement, writ never returned, such plea will be set aside, unless supported by affidavit. *MSS. Cases, C. B.*

Plea of privilege requires an affidavit to support same. *Ibid.*

Converture, after action brought, will not abate writ. *Barnes 4to Edit.* 355.

On tender, defendant must, at his peril of costs, tender enough. *MSS. Cases, C. B.*

A double plea, when the same contradictory, never allowed by court, unless supported by affidavit. *Barnes 4to Edit.* 351.

A defendant cannot plead double, when at the suit of the King. *Stat. 4 Ann. Barnes 4to Edit.* 353.

An issuable plea is such a one as plaintiff can go to trial on. *MSS. Cases.*

The statute of limitations not an issuable plea within the meaning of a judge's order to plead issuably. *Sir Geo. Cooke's Cases C. P.* page

Court will not allow defendant to plead several matters contradictory in themselves, and which prevent the bringing the cause to issue; but will allow him to withdraw a special plea,  
in



in order to plead the general issue. *Barnes 4to Edit. 347, 349.*

Pleas in abatement, or to the jurisdiction of the court, must be pleaded within the time allowed by the rule, and not after imparlance, unless declaration and rule are not delivered till within the four last days of term; in which case defendant is allowed till the four first days of next term. *Sir Geo. Cooke's Cases C. P. page 78. Gilb. Hist. and Pract. of C. B. page 52.*

On pleas of tender, money must be paid to the prothonotary, in same manner as on motion to pay money into court, and his receipt be wrote on the plea before filed or delivered. *MSS. Cases.*

On plaintiff's amending declaration, defendant has two days after amendment to alter his plea, or plead *de novo*. *Barnes 4to Edit. 17, 19.*

Pleas in *chief* are not limited to four days, like those in abatement. *MSS. Cases, C. B.*

Plea of ancient *demesne* must be pleaded within the time limited to plead in abatement, viz. within four days after declaration delivered, or left in the office. *Sir Geo. Cooke's Cases C. P. page 43.*

Rule on motion for defendant to plead such plea as he will abide by; a copy must be served on his attorney. *MSS. Cases, C. B.*

*Oyer*, when demanded by defendant, not absolutely necessary to be inserted in plea, but plaintiff may make up the issue with *oyer*. *Barnes 4to Edit. 327.*

Pleas in abatement, without being signed by a serjeant, are no pleas, and plaintiff may sign judgment. *Sir Geo. Cooke's Cases C. P. page 38.*

On defendant pleading double, plaintiff cannot have judgment in such action till both pleas are determined. *Sir Geo. Cooke's Cases C. P. page 97.*

Want

## The Modern Practice of the

Want of addition in writ may be pleaded in abatement to action without affidavit to support same. *Ibid.* 120.

All pleas must be delivered at length, and not wrote short. *Ibid.* 126.

On plea of *nil tial record*, issue is joined without adding rejoinder. *Ibid.* 56.

In all pleadings, when a traverse taken, the issue is closed. A traverse cannot be taken on a traverse; if taken to declaration, it destroys plaintiff's action; if to the bar, it destroys the matter offered in avoidance; and if to replication, what was said in avoidance of the bar, &c. *Gilb. Hist. and Practice, C. B.* page 66 and 67.

### Mutual Debts.

Where mutual debts between plaintiff and defendant, and defendant's demand more than covers that for which action brought, it is usual to plead the general issue, and a notice of set off. The plea and notice of set off, must be wrote on a sheet of treble penny stamped paper, and delivered to plaintiff's attorney. The person who delivers it must keep an exact copy on stamp, to produce and prove on trial (*if necessary*).

If action brought where there are mutual debts, and defendant's demand not sufficient to cover plaintiff's, his attorney must move to pay so much money into court, as, with demand, will cover same; and on serving plaintiff's attorney with rule, must give him a plea of the general issue, and notice of set off. There must be a copy to produce and prove as before.

In the notice of set off, the usual way is for defendant to traverse the counts in plaintiff's declaration, according to the nature of the case.

In

In the C. B.

Michaelmas Term, in the 12th Year  
of the Reign of King George the  
Third.

Dickins.

A. B.

against

C. D.

And the said A. by W. F. his attorney comes General is-  
and defends the wrong and injury when, &c. sue.

And saith, that he did not undertake and pro-  
mise in manner and form as the said T. A. above  
complains against him: And of this he puts  
himself upon the country.

Mr. C. B.

S I R,

Take notice that the above named defendant  
intends to give in evidence, and insist upon at  
the trial of this cause, that the above named  
plaintiff, at the time of suing forth the original  
writ against the said defendant in this cause, was,  
and still is indebted to the said defendant in  
forty pounds of lawful money of *Great Britain*,  
for divers goods, wares, and merchandizes of  
the said defendant, by the said defendant, to  
the said plaintiff, at his special interest and re-  
quest, sold and delivered: AND ALSO in forty  
pounds of like lawful money, for so much mo-  
ney by the said defendant, to and for the use of  
the said plaintiff, at his like special instance and  
request, paid, laid out, and expended: AND  
ALSO, in other forty pounds of like lawful  
money, for so much money by the said plain-  
tiff to the use of the said defendant had and  
received: And that the said several sums of

N 3

money,



# The Modern Practice of the

money, or so much thereof as may be necessary, will be set off in satisfaction of and against the money supposed to be due to the said plaintiff for the matters contained in the declaration in this cause, according to the form of the statute in such case lately made and provided. Dated the third day of *December*, one thousand seven hundred and seventy-one.

To Mr. C. B. attorney for }  
the plaintiff in this cause: }  
These.

Your's, &c.  
W. F. defend-  
ant's at-  
torney.

Indorse on back,  
*Michaelmas Term, 12th George the Third.*  
*Jones.*

A. } Plea and notice set off.  
against }  
B. } R. R. defendant's attorney.

## INTERLOCUTORY JUDGMENT.

Defendant having neglected to plead, or on special plea or demurrer, same being overruled, and judgment ordered for plaintiff, sign interlocutory judgment in manner following:

Take a sheet of treble penny stamped paper, and write about six lines of your declaration thereon, and on roll, make out warrants of attorney, file them with clerk of the warrants; pay him in *debt, trespass, and detinue*, 4 d. each; in other actions, 8 d. each; when he marks the judgment paper, then carry same with roll and draft declaration to prothonotary's office, who signs interlocutory judgment; pay him, if declaration be of the same term, 2 s.; if otherwise, he charges more. This done, you give notice of executing inquiry.

If

If defendant lives in *London* or *Middlesex*, or *Note.*  
within forty miles of *London*, eight days notice  
to be given exclusive of the day of notice; if  
above that distance, fourteen days exclusive of  
the same. If executed in the county, eight  
days notice exclusive. Rule, *Mich.* 1654,  
*C. B.*

In the *C. B.*

*A.*  
against  
*B.*

**Mr. R. K.**

Take notice that a writ of inquiry of da- Notice of  
inquiry.  
mages will be executed in this cause, on  
day of *(instant, or next, as case may  
be)* between the hours of ten and twelve of the  
clock in the forenoon of the same day, at the  
*Three Tuns* in *Brook Street, Holborn*, in the  
county of *Middlesex*, *(if action brought in Mid-*  
*dlesex)* if in *London*, at *Guildhall*, in the city of  
*London*; if in any other city or county, at the  
place, describing the same, where the sheriff of  
such city or county usually executes his writs of  
inquiry. Dated day of  
1772.

To *Mr. R. K. defend-*  
*ant's attorney:* }  
These.

Your's, &c.  
*W. G. plaintiff's*  
*attorney.*

If plaintiff finds himself incapable of pro- Observa-  
tions.  
ving his case, through want of a witness, or for  
any other cause, he must countermand the no-  
tice of executing writ of inquiry: This must  
be done two days exclusive of the day of giving  
such notice, before such inquiry is to be exe-  
cuted.

In

## The Modern Practice of the

In the C. B.

A. against

B.

Mr. R. K.

Form of  
counter-  
mand.Take notice that I hereby countermand the  
notice of executing the writ of inquiry in this  
cause, given you day of

Dated day of 1772.

Your's, &amp;c.

To Mr. R. K. defen- }  
dant's attorney: }  
These.W. G. plaintiff's  
attorney.Form of writ  
of subpoena  
to testify on  
writ of in-  
quiry.

George the Third, &c. To (here insert wit-  
nesses names, there may be four in each writ) We  
command you, and each of you, firmly injoin-  
ing you that all matters laid aside, and notwith-  
standing any excuse, you be in your proper  
person before (in Middlesex) John Wilkes and  
Frederick Bull, Esqrs. sheriff of Middlesex, on  
(the hour, day of the week, month, and year, inquiry  
is to be executed) at the Three Tuns in Brook Street,  
Holborn, in the county aforesaid; (in London,  
say) before the same sheriff, (calling them sheriffs of  
the city of London) (the hour, day, month, and year,  
inquiry to be executed); if to be executed in the  
country, insert (sheriff or under-sheriff's name, with  
same directions as to hour, day, time, and place as  
before) there to testify the truth in certain matter  
of controversy depending in our court, before  
our justices of the bench, between A. B. plain-  
tiff, and C. D. defendant, in a plea of trespass  
on the case (or as the nature of the action is)  
and this you are not to omit under the penalty  
of 100l. Witness Sir William De Grey, Knight,  
at Westminster, (here insert teste, viz. if in term,  
first day of term; if in vacation, last day of pre-  
ceding term) in the 12th year of our reign.  
(Indorsed with attorney's name who sues out same.)



This writ must be ingrossed on a 2 s. piece of stamped parchment. Get same at a law stationer; pay him 2 s. 2 d. This writ must be signed and sealed; pay prothonotary signing 1 s. sealing 7 d. There is no note for office on signing this writ.

Mr. R. T.

By virtue of a writ of *subpœna* to you directed, and herewith shewn, you are personally to be and appear before *(the sheriff or under-sheriff, calling them by name, as the case may be, on the day inquiry is to be executed, between the hours notice is given for, and the place where, as described in such notice)* then and there to testify the truth, in a certain controversy depending in our court before our justices of the bench, between A. B. plaintiff, and C. D. defendant, in a plea of trespass on the case *(or as the nature of the action is on the part of the plaintiff or defendant, as the case is)*: And this you are not to omit, upon pain of 100 l. Dated the            day of            in the 12th year of the reign of our Sovereign Lord George the Third, by the grace of God, &c. And in the year of our Lord 1772.

Form of subpœna ticket for witnesses on inquiry.

R. R. plaintiff or defendant's attorney, *(as the case is).*

By the Court.

You pay witness 1 s. when you deliver him this ticket, and shew him original *subpœna*. It must be personally served.

George the Third, &c. To the sheriffs of London, *(or any other city or county, as case may be)* greeting: WHEREAS A. B. late of, &c. was attached to be in our court before our justices at *Westminster*, to answer C. D. in a plea, for that WHEREAS *(here insert declaration verbatim from the word whereas to damages, &c.)* as it was said, and it was in such manner proceeded

Form of inquiry in case.

## The Modern Practice of the

ceeded in our said court, that the said *C. D.* ought to recover against the said *A. B.* his damages, by occasion of the not performing the said promises and undertakings, but because it is not known what damages the said *C. D.* hath sustained by occasion of the premises: Therefore we command you, that by the oath of twelve good and lawful men of your bailiwick, (*if London*) in the county twelve, &c. of your county, you diligently inquire what damages the said *C. D.* hath sustained, as well by reason of the premises as for his costs and charges by him about his suit in this behalf expended: And the inquisition which you shall make thereof, make appear to our justices at *Westminster*, (*the return*) under your seal, and the seals of those by whose oath you shall make such inquisition: And have you there the names of them by whose oath you shall make such inquisition, and this writ. WITNESS Sir *William De Grey*, Knight, at *Westminster*, &c.

*Dickins.*

Attorney's name to be indorsed.

Inquiry at  
the suit of  
an attorney.

*George the Third*, &c. To the Sheriff of *Middlesex*, &c. WHEREAS *A. B.* was attached by our writ of privilege, issuing out of our court here, to be before our justices at *Westminster*, to answer *C. D.* gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the same court, for such attornies and other ministers of the same bench, time out of mind used and approved in the same, in a plea, for that, to wit, That WHEREAS, (*as in declaration, to the damage*, &c.) as it is said: And it was in such manner proceeded in our said court of the bench: That, &c. (*as in former inquiry*) The  
return

return must be on a day certain as in *K. B.* the proceedings by attachment.

GEORGE the Third, &c. To the sheriffs of Inquiry London, greeting: WHEREAS *C. D.* by *R. R.* where a-  
his attorney, came into our court before our gainst attor-  
justices at *Westminster*, and exhibited to our said ney of this  
justices, his bill against *A. B.* gentleman, one court.  
of the attornies of our court of the bench pre-  
sent, in our said court in his proper person of  
a plea, for that, &c. as before.

*This writ must be returned on a day certain.*

These writs must be ingrossed on a double twelve-penny piece of stamped parchment.

They are signed by the prothonotary; pay him 1 s. and 4 d. for the first count, and 8 d. for every other; sealing 7 d. Two days before the time of executing same, if in *Middlesex*, carry inquiry to the sheriff's office in *Furnival's Inn*; if in *London*, to either of the *Compters*, and sheriff will cause a jury to be returned. On the day of executing inquiry, attend with your witnesses at the time and place appointed by your notice, open plaintiff's case in a short manner to the sheriff and jury: Swear witnesses, and examine them to the points to be proved, and jury, if satisfied with the proofs, will give a verdict for the plaintiff. In *London*, pay the sheriff for executing inquiry 1 l. 7 s. 4 d. and for every witness examined 4 d. a-piece. In *Middlesex*, and most other counties, the sheriff's charge is 1 l. 10 s. 6 d.

If any witness that you want to examine, refuses to attend, take out a *subpoena*, and serve him or them with a copy thereof, at the same time giving each a shilling with their ticket, as in cases of trial; and if they do not then at-  
tend,



tend, they are liable to the penalty of 100 l. each.

After writ returnable, call on sheriff, and he will return you the writ, with his inquisition thereon; when you get the same stamped on the back thereof for judgment, with a double half crown stamp at the stamp-office.

Note.

In this court, no rule for judgment is given as in *K. B.* but you must stay the four days exclusive: when time is out, take your inquiry and papers in the cause to prothonotary's office, and have costs taxed, and he signs final judgment: when execution may be taken out against defendant.

Practical remarks.

Inquiry may be executed on the day of return. *Cases of Practice, C. P.* 84.

Either party may have counsel on executing writ of inquiry. *MS. Cases.*

Court on motion will set aside inquiry, where the jury find no damages, or where they give excessive damages. *Barnes 4th Edit.* 230, 233.

Court will give defendant costs, if inquiry not executed according to notice. *Barnes 4th Edit.* 231. Rule, *Trin.* 13 *Geo.* 2.

Inquiry may be executed before the Chief Justice at *Nisi Prius*; but then the notice for executing same should be general, and not on a particular day. *Barnes 4th Edit.*

If any irregularity in inquiry, or in the execution thereof, if defendant makes a defence thereto, same is cured. *Barnes 4th Edit.*

No interest allowed plaintiff for his debt on executing inquiry but on promissory notes and bills of exchange. *Barnes 4th Edit.* 228.

Where a term's notice of trial is required, the same notice of inquiry is required. Rule, *Easter* 13 *Geo.* 2. *C. B.*

If court on motion sets aside inquiry for irregularity, a new writ must be sued out and executed *de novo*; but this cannot be done without leave of court on motion. *Barnes 4to Edit. 231.*

Inquiry must be executed within the hours mentioned in the notice given for that purpose, or it may be set aside on motion, and affidavit of the fact for irregularity; and such notice of executing same must not exceed two hours. *Barnes 4to Edit. 297.*

## WARRANTS OF ATTORNEY

Are wrote on a piece of unstamped parchment in the following form:

*Hilary Term, &c. (the term writ is returnable).* Plaintiff's  
warrant.

*Middlesex*, to wit, *A. B.* puts in his place *C. B.* his attorney, against *C. D.* late of, &c. taylor, in a plea of (*according to the nature of the action*).

*Middlesex*, to wit, *C. D.* late of, &c. puts in Defendant's his place *R. R.* his attorney, against *A. B.* in warrant. the plea aforesaid.

No judgment (except on *posseas*, *writs of inquiry*, and *non pros*) are to be signed by prothonotary, till warrants of attorney are filed, and clerk of the warrants hath first stamped judgment paper. Rule, *Mich. 5 Geo. 2. C. B.*

If defendant does not file warrant of attorney, plaintiff is to do it for him, and will be allowed for same in costs. *Ibid.*

## SUMMONS before a Judge.

To be taken out before any judge of this court; pay for same, and renewals, in term or vacation 2 s. each: If taken out by an attorney of the court, (where he is defendant) judge's clerk generally charges nothing. How to be taken out, and what paid for same.

If taken out in time, it is a stay of proceedings, (pending summons), if otherwise not, as judge

judge is not supposed to know state of cause on which summons is taken out, but takes it on the representation of party applying for the same.

Must be served on plaintiff's or defendant's attorney.

A true copy of all summonses must be served on plaintiff or defendant's attorney, (*as the case requires*), and the party who serves same, must read it over with original, to be able to swear to service, if necessary.

If defendant hath no attorney, copy must be served on him, or left for him at his last place of abode.

Time of attendance, renewals, and order thereon.

A summons for six o'clock, or any other given hour, attorney who takes out same must wait at judge's chamber till after seven o'clock. If not attended by attorney on the other side, summons must be renewed, and marked second summons, and served and attended as before; if not attended, renew same, and mark it third summons, and serve it; if third summons is not attended, you make affidavit (*vide Affidavits, page 42*) of having taken out, served, and attended the three summonses which you deliver to judge's clerk, and he gives you an order for the matter applied for.

Orders on summonses must be copied and served on plaintiff's attorney as before directed.

You pay judge's clerk for same in all cases, 2 s. each.

Consequence of non-attendance.

If summons is for any matter or thing which the suitors of the court are by the rules and orders thereof bound to obey, the non-attendance of the attorney, or the non-compliance of his client, will subject them (on plaintiff's attorney moving court to make judge's order a rule of court) to an attachment of contempt.

Cases relievable by summons.

To pay debt and costs, to be taxed by prothonotary, (on this you must agree upon the debt).

For common bail, instead of special bail, this must be supported by affidavit.

For time to put in bail above.

To add bail,

To justify,

To plead.



In these cases, if in time, judge will make an order on terms, *viz.*

*Pleading issuably, rejoining grat's, taking short notice of trial; the same of inquiry (if necessary within term).*

Judge will not bind defendant on first summons to all the above terms, unless the state of the cause requires it.

In all cases in a town cause, where defendant applies to judge for time to put in, add, or perfect bail, or for time to plead, judge will oblige defendant's attorney to enter into an order to plead an issuable plea.

If defendant afterwards pleads a dilatory plea, or such a one as plaintiff cannot try the law or fact upon, plaintiff may sign judgment as if no plea had been pleaded, and give notice of executing inquiry. On defendant's delivering a dilatory plea, if plaintiff makes up and delivers paper-book, this is a waiver of the agreement between plaintiff and defendant's attorney on judge's order, whereby plaintiff loses his remedy thereon, and must then proceed on paper-book, as if no such order had been made.

If defendant hath had time, and is not under all the terms aforesaid, judge will grant him further time, but so that plaintiff is not hindered trying cause the term writ is returnable, provided plaintiff could have tried it, had no time been granted to defendant.

In country causes, where cause of action is local, and cannot be tried but at the assizes, judge will be governed in his indulgence on all these matters, according to the time there is to come till the assizes, so that plaintiff be not prevented thereby from trying his cause at the then next assizes, if he should think proper.

If the parties plaintiff or defendant live in the **Note.** country, and the cause of action is transitory, the same doctrine is held by judge as in a town cause, allowing for the difference of notices to bring same to issue.

## The Modern Practice of the

Mistakes in declaration or issue, (*clerical, or otherwise*) may be repaired by summons; sometimes it gives defendants an imparlance, and sometimes subjects parties applying for relief to costs. It being an established practice of this court, that all proceedings, while on paper, are amendable by summons, except declaration in ejectment, which court considers as first process of such action.

Summons may be taken out to stay proceedings on bail-bond, if before plaintiff hath lost a trial, otherwise neither judge or court on motion, will grant relief therein. Judge will oblige defendant to perfect his bail before he will make any order; and then will oblige defendant to pay costs to be taxed by master; receive a declaration in the original action; plead to issue; take short notice of trial, so that the issue may be tried the same term. If plaintiff hath lost a trial, bail must consent that judgment may be entered against them on the bail bond for plaintiff's security.

If defendant doth not pay costs when taxed, plaintiff may proceed on bail-bond, as if no order had been made.

To shew  
cause. &c.

Summons may be had at any time from commencement of suit to issue joined, by plaintiff or defendant, to shew cause why all proceedings should not be stayed on payment of costs to be taxed by prothonotary. If by defendant for payment of debt and costs. If party applying doth not pay costs when taxed, or at the time allowed by order, the other side may proceed as if no such order had been made.

Defendant on this summons may get five or six days to pay debt and costs, but judge will tie him down to terms if early in the cause, so that plaintiff may not be delayed in trying his cause, on defendant's neglect to comply with order.

For superse-  
deas.

Summons for supersedeas, on plaintiff's not declaring against prisoner in two terms after return

return of writ; this is peremptory on first summons, and on plaintiff's neglect to attend same, judge will make an order to discharge prisoner.

Summons for attorney to deliver in to his client a bill of his fees and disbursements. This summons should have the name or names of the causes in the margin. Judge will not make order thereon till third summons. If judge's order made a rule of court, and then on service not complied with by attorney, attachment of contempt will issue against him, and so in all matters by summons, where judge cannot make an order *ex parte*, and where it is the duty of the attorney to attend to enable him to aid the summoner.

If attorney attends on this summons, judge will make an order for him to deliver his bill in a reasonable time, if not done, he is liable to attachment as before.

Bill being delivered, get summons to shew cause why bill should not be referred to the prothonotary to be taxed. If not attended on third summons, judge will make order thereon *ex parte*, by which he refers same to the prothonotary to be taxed, on party applying for same, undertaking in writing under his hand to pay such attorney the whole sum which shall appear to be due to him on such taxation. On this order get prothonotary's appointment for taxing same, which he marks at bottom of order. Serve copy on the attorney whose bill is to be taxed; if not attended, get second appointment, and serve same as before, and prothonotary, if attorney doth not attend, will tax same *ex parte*. Pending summons, order, and taxation, nor after, if the sum at which bill is taxed is tendered him, attorney cannot bring action thereon. If papers are required to be delivered up, and attorney refuses to deliver same, court on motion will compel him so to do, or issue attachment.



To discharge  
bankrupt  
out of custo-  
dy where  
rendered in  
discharge of  
bail, having  
obtained  
certificate.

Bankrupt must summon his plaintiff or plaintiffs before a judge, and on producing certificate duly allowed, judge will make an order directed to the keeper of the prison where bankrupt is in custody, to discharge him without fee or reward, if at no other person's suit since bankruptcy. If not in custody with warden, it must be a writ of superseas, and not an order. This is done on first summons.

Defendant may be discharged when in custody (*after bail perfected*) by summons before a judge. This is done on third summons.

Defendant may have summons to shew cause why common bail should not be accepted when affidavit for special bail is not sufficient or well founded.

Summon for infant to shew cause why he should not name a guardian to defend suit, &c. &c. &c.

## M O T I O N.

All errors on writ served, or on which defendant is arrested, defendant must seek redress from the court by motion. There must be a notice in writing given to the attorney on the other side; and a copy of such notice, and an affidavit stating the error in writ, must be together with affidavit of service annexed to notice, when you move same: Court grants in these cases a rule *nisi* thereon; if plaintiff shews cause, writ must be produced. It must be moved before defendant's time to plead is out, or court will not relieve to the prejudice of plaintiff's carrying suit to issue or judgment.

All errors on inquiry, or the execution thereof, defendant must apply to court by motion on notice, and affidavit of the fact on which a rule *nisi* will be granted, which must be served on plaintiff's attorney; if plaintiff shews cause, inquiry must be produced; if no cause shewn,

on affidavit of service of rule, court makes same absolute, and directs costs of application at their discretion. It must be moved before rule on inquiry is out, or defendant cannot have redress.

Defendant may set aside assignment of bail-bond, on putting in and perfecting his bail, &c. (as directed under summons) by motion, but it will be an easier expence to do it by summons, unless plaintiff is irregular in taking assignment, and then court on motion will subject him to the costs of same.

The same steps may be taken for any irregularity on either side, in the course of a suit, so it is done in due time, and the party offending not put to a greater expence than he would have been subject to had it been done before.

All applications to the court grounded on affidavit; the affidavits are filed with the prothonotary, and the party to answer same must bespeak and pay for an office copy of such affidavit, which must be read when he shews cause to rule granted thereon.

If defendant takes any step in cause after error committed by plaintiff in his proceedings, such step cures plaintiff's irregularity, and defendant cannot afterwards have redress from court, and so *vice versa*.

On orders of reference from court, the party seeking relief must apply before award made, unless on some irregularity in award, and then before order is made a rule of court, or he will be too late.

Applications to pay money into court, or for a *consilium*, &c. require no notice or affidavit.

To change *venue* no notice, only affidavit of the fact.

For a special jury, no notice or affidavit.

To put off a trial, there must be notice and affidavit that a material witness is absent; it must

## The Modern Practice of the

must be made two days before the day of trial, or it will not be granted.

On these motions, rule, whether *nisi* or absolute, must be drawn up with the secondary; pay for same according to length, and serve copy on the attorney on the other side.

*Note, — This short sketch of summons and motion will direct the practitioner in any matter that may occur in the course of his prosecuting or defending a suit.*

## I S S U E.

When defendant hath joined issue, plaintiff's attorney must make up issue, by copying same on treble penny stampt paper to deliver to defendant's attorney; charge 4 d. *per* sheet, containing seventy-two words, besides duty, and two shillings entering plea, if the general issue, otherwise according to the length; if declaration not paid for before, same is to be charged on back of issue.

*Note, — If issue of the same term with declaration, and it hath been paid for, then defendant is only on delivery of issue to pay for the subsequent pleadings to declaration.*

On delivery of issue to defendant's attorney, you demand payment of issue money, and if not paid, may sign judgment; but it is usual in practice to wait till the afternoon of next day, and even then, to demand the issue money in writing before signing judgment. This is not absolutely necessary; but the fair practitioner, who wishes to avail himself only of the merits of his client's cause, will always act thus.

If



If plaintiff's attorney delays delivering issue when joined, defendant's attorney may get a four day rule to enter issue, and bring in record from secondary, for which he pays 1 s. 10 d. serve copy of rule on plaintiff's attorney, and within the time of rule he must enter issue, and bring in record, or defendant may sign a *non prof.* Vide *directions under head of judgments on non prof.*

In *London* and *Middlesex*, defendant cannot give rule to enter issue same term it is joined, unless notice of trial has been previously given. In country causes, plaintiff is not obliged to enter issue same term it is joined.

Issues in this court are made up in the same <sup>Note.</sup> manner as in *K. B.* when by original, *viz.* without memorandum to declaration or plea; when against an attorney or officer of the court, and proceedings are by bill, the issue is made up with a memorandum; and so is plea, if defendant hath had an imparlance.

Easter Term, (the term issue is of) in  
the 12th year of the reign of King  
George the Third.

*Manwaring.*

*Middlesex*, to wit, } *C. D.* late of, &c. *tay-Issue,*  
or where venue laid. } *lor*, was attached to an-  
swer *A. B.* of, &c. (*as in declaration to the end*),  
and thereof he brings suit, and so forth.

Then in a new line enter plea or other plead- Plea, &c.  
ings to the end of the issue.

THEREFORE it is commanded to the she- Award of  
riff, that he cause to come here from the day venire.  
of

of (*the return of venire being some return before the day of trial*) Twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Note,—*Then issue is complete for delivery.*

Easter Term, (the term issue is of)  
in, &c.

*Manwaring.*

Issue against  
an attorney  
by bill where  
issue and bill  
of same  
term.

MIDDLESEX, to wit, BE IT REMEMBERED, That on (*the first day of term bill was of*) in this same term, A. B. came here into court by R. R. his attorney, and exhibited to the justices of our Lord the King of the Bench here, his bill against C. D. gentleman, one of the attornies of the court of our said Lord the King of the Bench present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words, to wit, TO THE JUSTICES of our Lord the King of the Bench, *Middlesex*, to wit, &c. (*here insert bill verbatim to the end*): And thereupon he prays relief, &c. Add pledges as in K. B.

Then plea in a new line, with or without a memorandum of imparlance, as the case is, with *similitur* and award of *venire*, when issue is complete.

Easter Term, &c. (*term issue joined*).

*Manwaring.*

Issue against  
an attorney  
when of a  
different  
term to bill  
filed.

HERETOFORE, as it appeareth in the term of St. Hilary last past, in the 640 roll, it is thus contained, *Middlesex*, to wit, BE IT REMEMBERED, That on (*the first day of term bill was filed*) in this same term C. D. came here into court by C. B. his attorney, and exhibited

hibited to the justices of our Lord the King of the Bench here, his bill against *A. B.* gentleman, one of the attornies of the court of our said Lord the King of the Bench, present here in court in his proper person, in a plea of trespass on the case, (*or according to the nature of the action*), the tenor of which said bill followeth in these words, to wit, TO THE JUSTICES of our Lord the King of the Bench, *Middlesex*, to wit, *C. D.* by *R. R.* his attorney, complaineth against *A. B.* gent. one of (*as in bill to the end*): And thereupon he prayeth relief, &c. Add pledges as in *K. B.*

AND the said *A. B.* in his proper person Plea with cometh and defendeth the force and injury, imparlance, when, &c. and prayeth leave to imparle thereupon here until (*the first day of term issue was joined*), and hath, &c. The same day is given to the said *C. D.* here, &c. And now here at this day cometh as well the said *C. D.* by his attorney aforesaid, as the said *A. B.* in his proper person: And upon this the said *C. D.* prayeth, that the said *A. B.* may answer to his said bill, &c. And the said *A. B.* as before defendeth the force and injury, &c. and saith that he did not undertake and promise in manner and form as the said *C. D.* above declareth against him, and of this he putteth himself upon the country, &c. And the said *A. B.* doth Similitur and award of venire, so likewise, &c. Therefore the sheriff is commanded that he cause to come here on (*the return of venire*), twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Easter



Easter Term, in the 12th year of King  
George the Third.

*Manwaring.*

Manner of  
indorsing  
issue.

A. B. }  
againſt } Issue.  
C. D. }

|   | l. | s. | d. |
|---|----|----|----|
| Copy issue, fol. 18, and duty,  | 0  | 6  | 6  |
| Entering plea, if general issue,<br>(otherwise according to the length, | 0  | 2  | 0  |
| Declaration unpaid, (if so)   | 0  | 0  | 0  |
|   | 0  | 0  | 0  |

Mr. C.

Take notice of trial in this cause for the fittings after this present *Easter Term*, (or whatever time cause is to be tried at Guildhall, in the city of London, if venue laid there) if in *Middlesex*, say at *Westminster Hall*, in the county of *Middlesex*; if in any other city or county, mention place where cause is to be tried, Dated  
day of 1772.

Your's, &c.

R. R.

*plaintiff's attorney.*

Practical remarks.

Eight days notice of trial must be given in *London, Middlesex*, or within forty miles of *London*, exclusive of the day of notice; if above that distance, fourteen days exclusive of the day of notice. By statute 14 Geo. 2. ten days notice at least must be given for notice of trial of a cause at the assizes where the parties reside in the country.

It is held that this statute doth not alter the practice where cause is to be tried in *London* or *Mid-*

*Middlesex*, and defendant lives above 40 miles from *London*.

If issue has been joined four terms, plaintiff must give defendant a term's notice of trial. This notice must be given before the essoign day of the term issue is intended to be tried, and so in all other cases where a term's notice is required. Rule, *Easter Term*, 13 Geo. 2. C. B.

If plaintiff has occasion to countermand notice of trial, he must deliver such notice of countermand; if in *London* or *Middlesex*, or within forty miles of *London*, two days exclusive of the day of trial; if in a country cause, two days before the commission day. Rule, *Mich.* 3 Geo. 1. C. B.

In the C. P.

A.  
against  
B.

Mr. C.

Take notice, that I do hereby countermand the notice of trial given you in this cause, for the sittings after this present *Trinity Term*, at *Guildhall*, in the city of *London*, (or such other place as cause to be tried at). Dated day of 1772.

Form of  
counter-  
mand.

To Mr. C.  
defendant's attorney,  
These.

Your's, &c.  
R. R.  
plaintiff's attorney.

By the practice of this court, a plaintiff may continue his notice of trial once, viz. from one sitting to another, within or after term, or till the next term, but if not tried then, you must countermand, and give fresh notice of trial.

In the C. P.

A.  
against  
B.

Mr. C.

Take notice, that I do hereby continue the notice of trial given you in this cause, for the sitting

Form of  
continuing  
notice.

P

## The Modern Practice of the

sittings after this present *Trinity Term*, to the first sitting in next *Michaelmas Term*, at *Guild-hall*, in the city of *London*, (or such other place as cause is to be tried at). Dated                      day of  
1772.

|                       |   |                                |
|-----------------------|---|--------------------------------|
| To Mr. C.             | } | Your's, &c.                    |
| defendant's attorney. |   | R. R.<br>plaintiff's attorney. |

Practical remarks.

Notice of continuance must be delivered within the same time as notice of countermand, but cannot be continued but once in a term. *Pract. Reg. C. P.* 396.

All notices where defendant hath a known attorney, must be given to such attorney or his agent, and not to defendant. Notices of trial and countermands, executing inquiry and countermands may be either given to the attorney in the country, or agent in town; but those things which are to be done in town only, notice must be given the agent in town. *Barnes 4to Edit.* 306.

In *London* or *Middlesex*, if plaintiff gives notice of trial for one sitting, and should himself not be ready to try same, he may give notice that sitting for the next. It is called notice by continuance. *Rule, Mich.* 1654.

Where defendant is under an order to take short notice of trial, plaintiff is to give defendant as long time as possible, without losing benefit of the sitting. Two days notice hath been held sufficient. *MS. Cases.*

Plaintiff cannot countermand and continue his notice of trial at the same time, tho' he may continue it once in a term, or countermand same as often as he pleases. *Sir Geo. Cooke's Cases, C. B.* page 146.

If



If any notice or countermand hath been given in the cause within four terms, no necessity to give a term's notice. Rule, *East. 13 Geo. 2.*

If cause made a *remanet*, defendant bound to attend till the cause is tried; but plaintiff may notwithstanding countermand same. *Pract. Reg. C. P. 393.*

If plaintiff does not countermand, or try the cause according to notice, defendant shall have his costs to be taxed on affidavit of the fact, (*see Affidavits, page 28.*) Rule, *Mich. 3 Geo. 1.*

Court will not stay proceedings for not paying the costs, except in ejectment. *MSS. Cases.*

A *pauper* by stat. 23 *Hen. 8.* liable to no costs, he is to be punished at the discretion of the judge; but the present practice is, if he don't try according to notice, or is guilty of any default, to give costs against him. *Rep. Pr. C. B. 47.*

## MAKING UP RECORD FOR TRIAL.

Plaintiff must ingross record on a double half crown press of parchment. Get rolls from the prothonotary's office; make an *incipitur* thereon of the issue. Carry record roll and issue paper to the prothonotary, who signs the record. Pay him 1 s. and for entering issue 2 s. a count; if special, he charges 8 d. *per folio* for the pleadings; file warrants of attorney with clerk of the warrants, or you may carry them with record to *Nisi Prius* office, and the clerk of the *jurata's* will examine the *jurata*; he charges at sittings 1 s at assizes 6 d. and then deliver your warrants of attorney (*if not filed before*) with record, to Mr. Brougham, (who takes the fee for the warrants). Pay him for first

P 2

three

## The Modern Practice of the

three sheets of pleadings 2 s. and for every other sheet 4 d. seal 2 s. 2 d. if three weeks after term, 2 s. for judge's warrant. Rule, *Trin. 29 Car. 2. C. B.*

*Note.*—In this court the *placita* to record is wrote but once, except on the death or change of the chief justice pending the suit being at issue, or on an old record, and then you add a second *placita*.

### FORM of RECORD of Nisi Prius.

**Placita.**

PLEAS at *Westminster*, before Sir William De Grey, Knight, and his companions, justices of our Lord the King of the Bench of (*the term issue is of*) in the 12th year of the reign of our Sovereign Lord George the Third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c.

Roll.

Dickins.

**Issue.**

MIDDLESEX, to wit, A. B. late of, &c. taylor, was attached to answer C. D. of a plea of trespass on the case; and whereupon the said C. D. by R. R. his attorney, complains, That WHEREAS, &c. (*to the end of issue and award of venire, according to the nature of the action*).

Then add in a new line the *jurata* thus:

**JURATA.**

MIDDLESEX, to wit, THE JURY between C. D. plaintiff, and A. B. late of, &c. taylor, in a plea of trespass on the case, (*or as the nature of the action is*) is respited here until (*the return of the habeas corpora juratorum, which must be returned the next return after the day of trial*): UNLESS Sir William De Grey, Knight,  
the

the King's Chief Justice of the Bench here assigned by form of the statute in that case made and provided, shall come before on (*the day of trial*) at *Westminster*, in the Great Hall of Pleas there, commonly called *Westminster Hall*, in the said county of *Middlesex*; (*if in London*) say, at the *Guildhall* of the city of *London* aforesaid, for default of jurors, because none of them came: Therefore, let the sheriff have the bodies of the several persons mentioned in the panel annexed to the writ of *habeas corpora juratorum*: And be it known, that the justices here in court, in this same term, delivered a writ thereupon to the deputy of the sheriff of the county aforesaid, to be executed in form of law, &c.

THE JURY between C. D. plaintiff, and A. B. late of, &c. taylor, in a plea of trespass on the case, (*or as the action is*) is respited here until (*the return of hab. cor. jura.*) UNLESS our Lord the King's justices assigned to take the assizes in the county aforesaid, by form of the statute in that case made and provided, shall come before on (*the day of assizes and place where same are held*) in the county aforesaid, for default of the jurors, because none came: Therefore, &c. (*as before in former jurata.*)

Jurata for  
the assizes.

The plaintiff's attorney must make out writs of *venire facias* and *hab. corpora*, which are on a two shilling stamp each, and may be had at any law stationer's, price 2 s. and 2 d. The *venire* is signed by prothonotary; pay him 1 s. and 4 d. The *habeas corpora* is signed by Mr. Harrison, clerk of the *habeas corpora*; pay when in *London* or *Middlesex*, 2 s. if at the assizes 1 s. and 9 d. No *precipe* is made for the office on these writs.

Observations  
on venire facias and hab. corpora.

If cause not tried at time mentioned in *habeas corpora*, you make out a new writ. If you carry



carry the old writ to the officer, you save 1 s. and 1 d. Pay sealing, at seal office, 7 d. each.

If cause to be tried in *London* or *Middlesex*, *venire* is to be tested the first return of term in which cause is to be tried, and returned some return day before trial; the *hab. corpora* must be tested on the return day of the *venire*, and returnable the next return day after trial. If at assizes, *venire* must be tested the first return day preceding the assizes, and returnable the last day of that term; the *hab. corpora* must be tested on the return day of *venire*, and returnable the first return of the next term after the assizes.

If in *London* or *Middlesex*, the *venire* is taken out by plaintiff's attorney, in order to be allowed him in costs, but never signed, sealed, or used. In *London*, carry *hab. corpora* to one of the *Compters*; pay sheriff for returning it, 4 s. 6 d. In *Middlesex*, carry same to the sheriff's office in *Furnival's Inn*; pay there returning 12 s. If in a country cause, *venire* is returned by sheriff's deputy in town, and the *disfringas* by the under-sheriff in the country.

**Subpœna:**

Blank *subpœnas* are to be had at any of the law stationers, on a double twelve-penny stamp. Pay for same 2 s. 1 d. Four witnesses may be put in each *subpœna*. Test of writ of *subpœna* any day in term before trial and service. There is no note made for office on signing this writ.

Carry the *subpœna* to the prothonotary; pay signing 1 s. sealing 7 d.

Get *subpœna* tickets at law stationers; fill them up by *subpœna*. Direct each to a witness, and serve a ticket on each witness, giving a shilling therewith; and, at the same time, shewing the original *subpœna*. It is usual to write at bottom of *subpœna* ticket where witness is to meet plaintiff or defendant's attorney (*as case may be*) on the day of trial.

George the Third, &c. To the sheriff of *Venire facias*,  
*(where venue laid)* greeting: We command you, that you cause to come before our justices at *Westminster*, on *(here insert some return day before trial)* twelve free and lawful men of the body of your county, each of whom has ten pounds by the year of lands, tenements, or rents, at the least, by whom the truth of the matter may be the better known, and who are in nowise in kin either to *C. D.* plaintiff, or to *A. B.* late of, &c. to make a certain jury of the country between the parties aforesaid, on a plea of trespass on the case, *(or as the action may be)*, because, as well the said *A. B.* as the said *C. D.* between whom the matters in variance are, have put themselves upon that jury; and have there the names of the jurors, and this writ. Witness Sir William De Grey, Knight, at *Westminster*, *(the first day of term of which cause to be tried)* in the 12th year of our reign.

*Attorney's name, day, month,*  
*and year, indorsed on the*  
*back.* }

*Note.*—If defendant hath an *alias dist.* in declaration, or is an executor, or administrator, he must be so described in this writ.

If cause carried down by *proviso*, then insert in *venire*, after the words *this writ*, PROVIDED ALWAYS, that if two writs shall thereupon come to you, that you shall only return one of them to our said justices at *Westminster* at the time aforesaid.

George

Hab<sup>as</sup> cor-  
pora.

George the Third, &c. To the Sheriff (*where venue laid*), greeting : WE COMMAND you, that you have before our justices at *Westminster*, (*the return being first return day after trial*) : If at the assizes, say, *before our justices assigned to take the assizes in your county*, by force of the statute in that case made and provided, if they shall come before on (*the day of trial*) at (*if in London or Middlesex, Guildhall or Westminster Hall*) ; if at the assizes, at (*place where assizes held*) in your county, the body of the several persons named in the panel annexed to this writ, jurors summoned in our court before our justices at *Westminster*, between C. D. plaintiff, and A. B. late of, &c. of a plea of trespass on the case, (*or as the nature of the action is*) to make that jury : And have there this writ. WITNESS Sir William De Grey, Knight, at *Westminster*, &c.

(Indorse same as venire.)

Subpoena to  
testify on a  
trial.

George the Third, &c. To (*the witness by name, you may put four in a writ*) greeting : WE command, and firmly enjoin you, and each of you, that laying all other matters aside, and notwithstanding any excuse, you be in your proper person, before (*if in London*) Sir William De Grey, Knight, our Chief Justice of the Bench at *Guildhall, London*, on (*the day of trial*) (*if in Middlesex, before the same Chief Justice*) at *Westminster*, in the Great Hall of Pleas there, called *Westminster Hall* ; (*if at the assizes*) say, before (*the justices of assize, naming them*) our justices at the assizes to be held at (*place where assizes held*) in the county aforesaid, on (*the day of assize*) to testify and speak the truth in a certain matter of controversy pending undetermined in our court, before our justices at *Westminster*,



ster, between C. D. plaintiff, and A. B. late of, &c. taylor, defendant, in a plea of trespass on the case, (or as action is): And this you are not to omit, under the penalty on each of you of 100 l. WITNESS Sir William De Grey, Knight, at Westminster, &c.

(Indorsed as before.)

Mr. J. K.

BY VIRTUE of a writ of *subpœna* to you *Subpœna* directed, and herewith shewn unto you, you ticket. are commanded personally to be and appear before Sir William De Grey, Knight, with his title of office, if in London or Middlesex; if at the assizes, before (the justices of assize, with their title as in commission) at (the place where tried) on (the day of trial) by nine of the clock in the forenoon of the same day, to testify the truth, according to your knowledge, in a certain cause now depending, and there to be tried, between C. D. plaintiff, and A. B. late of, &c. taylor, defendant, in a plea of trespass on the case, (or as the action is), on the part of the plaintiff or defendant, (as the case is): And hereof you are not to fail, on pain of 100 l. Dated the                      day of                      1772.

BY THE COURT.

To meet at  
Coffee-house,  
Ask for R. R. plain-  
tiff's attorney, (or  
as case is).

If any of your witnesses should be in prison, you must have a *habeas corpus* to bring them to give their testimony.

George

Habeas corpus to bring witnesses when in prison.

George the Third, &c. To E. F. Esq; &c. greeting: (*this writ must be properly directed to the officer in whose custody witness is*) We command you, that the body of (*the witness by name*) in our prison, under your custody, as it is said, detained under safe and secure conduct, by whatsoever name the said (*the witness*) may be called in the same, you have before Sir William De Grey, Knight, our Chief Justice of the Bench at *Westminster Hall*, in the county of *Middlesex*, or at *Guildhall*, in the city of *London*; if at the assizes, mention the names and titles of justices of assizes, and place where assizes held, on (*day when cause to be tried, at nine o'clock in the forenoon of the same day*) to testify and speak the truth, in a certain matter of controversy pending and undetermined in our court before our justices at *Westminster*, between C. D. plaintiff, and A. B. late of, &c. taylor, defendant, in a plea of trespass on the case (*or as the action is*); and immediately after the said (*the witness*) shall then and there have given his testimony before the said (*the judge who tries cause, whether in town or country*) to return him the said (*the witness*) to our said prison, under a safe and secure conduct; and have you there this writ. Witness Sir William De Grey, Knight, at *Westminster*, (*teste according to general directions*) in the 12th year of our reign.

To obtain the above writ, you must move court on affidavit, that he is a material witness. *Barnes 4to Edit. 222.*

If plaintiff or defendant hath a witness going abroad pending suit, they may by motion of court, grounded on affidavit of the fact, procure a rule of court to examine such witness before a judge, at his chambers, on interrogatories.

ties. When rule obtained, it must be drawn up with the secondary; pay for same 5 s. It is most prudent to get your counsel employed in the cause to draw the interrogatories, as they must be signed by counsel, for which you will furnish him with instructions, according to such parts of the case as witness can speak to. When your interrogatories are ready, you serve copy of rule, and give notice to attorney on the other side, when and before what judge you shall bring your witness to be examined, that he may attend to cross-examine him, if he thinks proper.

The depositions taken before the judge, on such examination, each party generally takes copies of, which are delivered them by the judge's clerk. Pay him after the rate of 11 d. per sheet for same, which are read by the party examining witness as evidence for him on the trial of the cause.

Causes in *London* or *Middlesex*, if for the sittings, in or after term, must be entered, and the record and writs brought in on or before the days, and sittings, respectively. Rule, *Hilary* 8 Geo. 1. C. B.

Cause must be entered in the marshal's book at Sir William De Grey's chambers in *Serjeant's Inn, Chancery Lane*. Pay entering 13 s. 9 d. When you enter cause, leave record with *bab. corpora* and panel annexed, with the marshal.

Manner of entering cause for trial in town.

In a country cause, the writ and record to be entered together with the marshal; pay him 11 s. 8 d. and no record to be received without writ, which are to be delivered to the marshal the day after commission is opened before the court sits: But in the counties of *Norfolk* and *York*, not till the second day after commission day. Rule, *Hil.* 14 Geo. 2.

When a country cause.

All



All town and country causes are to be tried in the order as they stand in judge's paper, unless reasonable cause shewn to the contrary by party requiring same. *Ibid.*

## EVIDENCE.

Evidence is either written or unwritten, public or private.

Comparison of hands evidence in civil cases. The Pope's licence, without the King's, good evidence of an impropriation. *Palm.* 427.

A Pope's bull no evidence on a general prescription to be discharged of tithes; but evidence on a spiritual prescription respecting lands that formerly belonged to a monastery, and were discharged from tithes at the time of dissolution. *Theor. Evid.* 44.

An old survey of a manor may be given in evidence. *Trials at Nisi Prius* 234.

Written private evidence, not under seal, is to be considered at common law, and on the statute of frauds.

Mere hearsay evidence is not admissible, but may corroborate the testimony of a witness.

No man's promise supposed to extend to impossibilities. *Tri. per pais* 399.

A promise to marry a woman within three months; a second promise to marry her within six months, discharges the first; but not, if the second promise had been to marry her in a less time than first agreed on. *Tri. per pais* 401.

In an *assumpsit* in deed, the very contract must be set forth in declaration; but in an *assumpsit* in law, if the plaintiff shews part of the goods delivered,

livered, or money lent, it is sufficient. *Com.* 373.

On mutual executory promises and contracts, each has a remedy on the other for non-performance. *Rol. Rep.* 336.

If there are no words in a promise, covenant, or agreement, that import a condition, they are never construed conditional. *Owen* 54.

If defendant's promise arises on the consideration of some act to be done and performed, and not on the promise, the act must be first done before defendant's promise can arise. *Ld. Raym.* 665.

In an *assumpsit* in law, actual payment, or any matter that excuses payment, may be given in evidence on *non assumpsit*; but in an *assumpsit* in deed, it must be pleaded. *Ld. Ch. J. Parker.*

In debt against an executor, he pleads the testator was taken in execution by a *ca. sa.* the jury find he was taken by an *alias capias*; this shall be intended on the same judgment without any averment. *Gilb. L. Evid.* 39.

The wife by her contract cannot bind her husband. *2 Ven.* 155.

The act of the wife contracting, if she cohabits with her husband, is presumptive to persuade the jury of the contract of the husband; but not if absented from the husband. *Salk.* 113.

The usual employment of the wife is good, but not conclusive evidence; and that the husband has paid her debts is stronger. *Ibid.*

That the things came to the use of the husband, or his family; were necessary; or that he was absent; is good evidence of a contract to bind the husband, but not conclusive evidence. *Ibid.*

If the husband forbid any one from trusting his wife, and he afterwards trust her, he cannot charge the husband with this contract. *Ld. Raym.* 445.

If the jury finds the wife contracted for necessities in the absence of the husband, this is good evidence to persuade them the husband doth contract; but if this be found and offered to the court, they cannot judge it the husband's contract. *Ibid.*

A wife may do an act relating to her own estate, but cannot constitute an attorney to do it. 2 *Saund.* 215.

Acceptance makes the correspondent liable in a special action on the case, on the custom of merchants, but not in an action of debt. *MSS. Cases, C. B.*

An indorser of a note, acknowledging such indorsement as his handwriting, is no evidence against drawer, on action brought against him by indorsee. *Barnes 4to Edit.* 436.

Evidence of a writ sued out on a subsequent day, may be given to obviate the fictitious relation of a declaration to the first day of term where it has a special memorandum. *MSS. Cases, C. P.*

A retainer of a debt may be given in evidence. An administrator, when defendant, may give such retainer in evidence, or plead it. *Ibid.* 1383.

Obligation to deliver twenty bales of silk, or 40*l.* on non-payment, the obligee may sue on either. *Hil. Aff.* 1701.

If a man declare on a bond made the 1st of *August*, and on the profert it appears to be dated the 2d, on demurrer, the court cannot adjudge them to be the same; the reverse in leases. 12 *Mod.* 193. 5 *Mod.* 281.

But if after *oyer* of the bond, defendant pleads *non est fact.* and the jury finds it his deed, the court will intend them the same. 5 *Mod.* 281.

When a word in a deed is capable of two senses, that sense is to be taken that makes most strongly against the grantor. *Styles* 118.

A contract founded on a specialty cannot be dissolved but by a specialty. *Cro.* 884.



In a verbal contract, the individual contract set forth in the declaration must be proved. *Gold. 154.*

Copy of a record is evidence; but the copy of a copy no evidence. 3 *L. 387.* 2 *Bac. Abr. 308.*

Where a record is lost, a copy of it may be read, without swearing it a true copy. *Salk. 185.*

Office copies not evidence, unless authenticated by the proper officer. *Stat. 8 Geo. 2.*

Copies of public matters, not of record, may be given in evidence, but not a voluntary affidavit. *Theor. Evid. 22.*

A copy of a will remaining in the Chancery is good evidence. *Keb. 117.*

Copyhold rolls stating a surrender to the use of the will of *A.* no evidence of the seisin of *A.* without the will. *Jenkins and Baker, per Tracey 1705.*

He who has an uncertain estate, has a title to the corn, &c. on its determination; hops reared on old stocks excepted. *Cro. 460.*

Rolls or copies of a court baron good evidence. *Theor. Evid. 43.*

Probate of a will good evidence as to the personal estate. *Roll Abr. 678.*

A decree in Chancery, or a sentence in the Ecclesiastical courts, may be given in evidence. 2 *Strange 1242.*

A bill in Chancery is evidence against the complainant, unless no proceedings thereon. 2 *Sid. 221.*

An answer is evidence against defendant, but then the confession must be all taken together. 5 *Mod. 10.*

An infant's answer by his guardian shall not be given in evidence against him in a suit at law. *Salk. 350.*

An affidavit proved to be sworn, is evidence against the person, provided the proceedings on which the affidavit arose are given in evidence

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 dence to prove the identity of the person. *Str.*  
 35.

The voluntary affidavit of a stranger is no evidence. *Styles* 446.

Depositions may be read when the witnesses are dead, on affidavit that they have been sought and cannot be found, on proof of their having been *superna'd*, and falling sick by the way. *2 Bac. Abr.* 305. *11 Mod.* 263.

But cannot be given in evidence against any person that was not party to the suit. *Hard.* 472.

Demands arising on the same contract, and in the same action, may be balanced. *MSS. Cases, C. B.*

The deed itself must be given in evidence, and be proved by one witness at least, unless an ancient deed, above forty years old, with which possession has gone, unless original burnt, or in defendant's hands, who will not produce it, when the copy is good evidence, if proved to be compared with the original. *10 Co.* 92. *11 Mod.* 256.

An alteration of a deed in part not material by a stranger, without the consent of the parties, does not avoid the deed, but does in a material part. *2 Str.* 1160.

But an alteration by the party himself, in a part not material, does avoid the deed. *11 Co.* 27.

If one covenant be altered, it destroys the whole deed. *11 Co.* 286.

If blanks in places material be filled up by consent of the parties, the obligation is void, but not in places immaterial. *2 Roll. Abr.* 29.

Where the deed is necessary to be shewn, in order to acquire the interest, there a man fails if the seal be torn from his deed. *3 Bulf* 79.

If

If one of the obligor's seals be torn off, it destroys a joint but not a several obligation. *Noy* 112.

There must be a *profert* made of solemn contracts in an action founded upon such contract, unless detained by the adverse party. *Mich.* 1718, *in the Exch.*

If a man issue out an *elegit*, and brings an ejectment to try his title, he must shew his *elegit* filed. *Tri. per pais*, 6 Ed. 386.

If the plaintiff declares for a manor, he must prove the attornment of the tenants. *Str.* 106.

If a man makes a general entry into part, it is sufficient to vest the whole estate; but where he enters to divest an estate, his entry must be special. *Co. Lit.* 15 B.

If there be a disseisin of two acres in two different counties at the same time, there must be distinct entries. *Co. Lit.* 49 B.

Copy of an execution no evidence, the original must be produced. *Tri. at Ni. Pri.* 214.

On *plene administravit*, execution executed cannot be given in evidence, without the judgment; nor is an account given in to the ordinary evidence, or to be regarded. *Tri. per pais* 227, 235.

Exemplifications of depositions in Chancery shall be delivered to the jury, if the party be dead; but if they comprehend the testimony of some that are living, they cannot be given in evidence. 2 *Roll's Abr.* 687.

Things that lie in livery may be pleaded without deed; but for a thing that lies in grant regularly, a deed must be shewn. *Gilb. L. Evid.* 84.

Livery is an estoppel, *per pais*. *Co. Lit.* 352.

A deed of feoffment may be given in evidence as a release; and a deed may be given in evidence



# The Modern Practice of the

dence on a rule of court, without proving such deed. *Tri. per pais* 209, 347.

Chirograph of a fine, evidence of such a fine, but not of the proclamations, which must be examined from the roll. *Pl. Com.* 110. *B. Tri. per pais* 209.

The indorsement of an inrolled deed is evidence, without further proof of the deed. *Stat. 8 Geo. 2.*

If an inrolled deed be lost, a copy of the inrolment only, made out by the clerk of the assize, is no evidence, without proving it examined. *Ibid.*

An informal issue is aided by the statute of jeofails. *Raym.* 98.

On a special issue, nobody can run into any point that is out of the issue; but on the general issue, whatever tends to satisfy the plaintiff's cause of complaint, may be given in evidence. *Gilb. L. Ev.*

In debt against two, if proved the debt of one, and not of another, the issue is maintained. *2 Roll. Abr.* 677.

*Not lettered*, evidence on *non est fact.* *Plowd.* 66.

A stranger cannot plead a general or a special *non est fact.* but *rien s'ass'a par le fait.* *Roll. Rep.* 188.

Infancy cannot be given in evidence, but must be pleaded; coverture may. *Tri. per pais* 467.

Evidence that the person was blind, and the deed misread to him, will justify *non est fact.* *Styles* 78.

If the defendant pleads *non est fact.* and demurs to the obligation, the demurrer is void. *Stat. 35 H. 6. 9 B.*

If two are jointly bound, and one is sued, he must plead this in abatement, and cannot give it

it in on the general issue on *non est fact.* otherwise on *assumpsit*. Sid. 420. 2 Vent. 151.

In debt on a single bond, payment without acquittance is no plea; but payment at the day is a good plea to debt on an obligation with a condition. *Gilb. L. Evid.* 173.

On *solvit ad diem*, the payment ought to be proved on the very day the money payable; but this is aided by the statute for amendment of the law. Stat. 4 Ann.

*Non assumpsit infra sex annos*, lies in all actions on the case; but does not extend to an *assumpsit* between merchant and merchant; and is pleaded by way of negation to the declaration, or by way of bar. 2 Salk. 424. *Gilb. L. Evid.* 180. *Lib. Plac.* 61.

Confession of the defendant within the time, is evidence of a new promise, if found by a special verdict. 12 Mod. 578.

Upon an *assumpsit*, covenant under hand and seal to pay, is no evidence, nor any specialty or matter of record, or any contract for rent. *Danv. Abr.* 30, &c.

The wife, by her contract, cannot bind the husband. 2 Vent. 155.

On *non assumpsit*, infancy may be given in evidence in discharge of the promise. *Raym.* 389.

On an *indebitatus*, no evidence can be given of an account current. 2 Keb. 781.

Delivery of the goods, evidence of the sale on a *quantum meruit*. *Gilb. L. Evid.* 187.

If a man makes a lease for years, in debt for tithes, *nil debet* is the general issue; but in debt on an obligation, *non est fact.*

Ejection, expulsion, or any suspension of rent, is good evidence. *Gilb. L. Evid.*

Payment may be given in evidence; but a release must be pleaded. *Ibid.*

On

On Not guilty in ejectment, the lessors must be the same in the allegation and evidence. *Show. 342.*

If there be several coheirs, they must make several leases to try their titles. *Ld. Raym. 726.*

The lease proved, must agree with the lease alledged, in the land and number of acres. *Gilb. L. Evid. 212.*

Where the declaration is of a lease generally, a lease made by a copyholder or guardian is good evidence. *Hard. 330.*

A demise of the herbage and pannage, not sufficient to maintain the issue. *Ibid.*

The confession of entry and ouster does not extend to such cases where it is necessary to prove an ensry to make a title in the lessor of the plaintiff, as for a condition broken, or to avoid a fine. *Salk. 259. 2 Barn. 217.*

If a man makes a lease to begin a *die datus*, he cannot prove his entry at the day the lease was made. *Str. 550.*

If a lessee assign or make a lease to another, the second lessee must prove the possession of the first. *Gilb. L. Evid. 231.*

Trustee of a lease, lessor in ejectment, by his disclaimer in *pais*, will avoid the plaintiff's title. *2 Keb. 795.*

In ejectment, defendant cannot give in evidence a former mortgage or contract made by himself. *Tri. per pais, 6 Ed. 388.*

A parson in ejectment must prove admission, institution and induction, his subscribing the articles, and declaring a full and free assent to the common prayer, (*unless after ten years possession*), but need not shew any right in his patron. *6 Co. 29 b. 2 Sid. 221.*

On Not-guilty pleaded, if lessor of the plaintiff shew a feoffment, defendant may give  
covin



covin in evidence, but not on *nient*, *seoffa. pas.*  
Hob. 166.

But if a feoffee by covin pleads that he was seized at the time of the judgment, by virtue of a feoffment, and the creditor, that he was not seized, on this issue the covin may be given in evidence. *Hob. 72.*

An heir pleading *riens per descent*, and giving a feoffment in evidence, plaintiff may give covin in evidence. *Gilb. L. Evid. 234.*

If copies of court-rolls are shewn to prove a customary estate, the enjoyment of such estate must be proved. *Styles 450.*

Plaintiff assigning the trespass in a particular acre, evidence in trespass in half that acre is sufficient. In ejectment, plaintiff must prove title to the whole. *Yelvert. 114.*

One tenant in common bringing trespass without the other, defendant must plead this in abatement, and cannot take advantage of it on the general issue; *vice versa* in ejectment. But if one brings the action against the other, he may take advantage of this on the general issue. *2 Str. 280. 3 Leon. 94.*

A licence or defect of inclosures cannot be given in evidence by defendant. *Co. Lit. 283.*

That defendant came into plaintiff's ground to glean may be pleaded, but cannot be given in evidence. He may also plead that he entered plaintiff's close to take his own horse, but cannot give it in evidence. A right to a way may also be pleaded, but not given in evidence. *Tri. per pais, 394, 395, 399.*

In trespass all are principals. *Co. Lit. 57.*

Defendant in trespass for the mesne profits after a recovery in ejectment, cannot insist on any title over-ruled on the ejectment. *Sid. 239.*

In

## The Modern Practice of the

In an action for false imprisonment, defendant may give in evidence, that he acted by virtue of a warrant from a justice of the peace. Stat. 7 Jac. 1.

Defendant may justify by reason of a prescription, but cannot give it in evidence. Clays. 54.

Defendant may give in evidence, that he entered by command of the person in whom the right of the freehold was. 2 Rol. Rep. 682.

In an action against an innholder, for suffering the goods of his guests to be taken out of his house, he may give in evidence, that he told plaintiff his house was full; and that nevertheless he would come in and lodge there. Rol. Abr. 3.

If the recoverer brings trespass, though judgment be reversed by writ of error, he may give the whole matter in evidence, and maintain his declaration. 13 Co. 21.

In trespass, evidence of agistment of beasts taken into the land of defendant, will maintain the declaration. Tri. per pais 368.

In trespass, *et alia enormia ei intulit*, any matter *ex turpi causa* may be given in evidence, as an injury done to plaintiff's daughter. Keb. 787.

Evidence, that the trespass was done before action brought, is sufficient. 2 Rol. Abr. 680.

Though a man be proved dead when it is declared *he assumed*, proof of a promise on another day will do; but in trespass, proof of his death on the day discharges the action. Ld. C. J. Holt.

In an action on the custom for safe carriage, evidence of the delivery and charge to carry them safe, is sufficient, without shewing whither; and if no price be settled, it shall be supposed to be for the usual price; but if a special agreement be averred, it must be proved. Gilb. L. Evid.

In

In trespass, defendant may prevail by proving title to the land, or to the profits thereof. *Ibid.* 243.

In trover against husband and wife, it is sufficient to prove the goods in possession of the wife. *Rel. Abr.* 6.

If defendant converts to his own use goods delivered to him by plaintiff to keep, it is sufficient evidence of a trover. 2 *Bulst.* 312.

If the bailee refuses to deliver a thing pawned, on tender of the money, it is evidence of a trover. *Nay* 137.

A request and denial is evidence of a conversion; thus, if trover be for money, these circumstances are so strong a presumption of conversion, that nothing can be proved to the contrary; but it is not conclusive evidence, if the money be in a bag. 2 *Bulst.* 314.

Defendant, where he has a general property, may give it in evidence on the general issue. *Gilb. l. Ev.* 263.

Nature of the thing being altered, is good evidence of a conversion, but not of *detinue*. *Str.* 576.

Abuse of an horse lent, no evidence in *trover*; but if the horse was lent to go to *Leaves*, and the defendant took him to *Bedford*, this evidence will maintain trover. 2 *Bulst.* 309.

An unjust taking of goods, if proved, is good proof of conversion, though plaintiff cannot prove either demand or refusal. 2 *Sid.* 264.

Plaintiff must prove property in *trover*, but not in trespass. *Ld. C. J. Holt.*

Defendant pleading *nullum fecit vastum*, cannot give in evidence that the buildings were repaired, and the waste set right, before the action brought, or licence to cut down trees; but may give in evidence, that the house was in a ruinous state at the time of the lease made, that  
it



it was blown down, or burnt by accident. *Co. Lit.* 283. 11 *H.* 8.

If the defendant cut timber, and lay it out in repairs, he must plead this matter, but cannot give it in evidence. *Gilb. L. Evid.* 274. *Co. Lit.* 283.

A man may give a release before the *disseisin*, in evidence; but after, it must be pleaded. *Co. Lit.* 283.

Plea of *son assault* cannot be given in evidence on the general issue; it must be pleaded. *Tri. per pais* 398.

If any matter given in evidence that was used at a former trial, it must be between the same parties. *Lewes and Clerges, Gilb. L. E.*

What a man swore at one trial may be given in evidence at another, if he then swears differently to the same fact, in order to take off the weight of his evidence. 2 *Keb.* 384.

Trover will lie against a man who borrows a horse belonging to another, and rides him, and afterwards returns the said horse, because he had the horse in his possession, and converted him to his use; the re-delivery will only be evidence in mitigation of damages. *Roll. Abr.* 5.

A verdict given in ejectment, between same parties, on same point, may be given in evidence on another trial between them, though not for the same land. *Lewes and Clerges, Gilb. L. Evid.*

A verdict in a criminal matter cannot be given in evidence on a civil one. *Gilb. L. E.* 31.

Ejectment against several, verdict obtained against one defendant, cannot be given in evidence against the rest. *Lord Raym.* 1292.

Verdict in ejectment or trespass, on party's own oath, cannot be given in evidence on another action brought for same trespass; otherwise if founded on other testimony. 2 *Sid.* 315.

No one can take the benefit of a verdict in evidence, that was not liable to advantage or prejudice therefrom. *Hard. 472.*

A person who holds a term for years, and recovers against his lessee, the reversioner may give such verdict in evidence. *Ibid.*

If *A.* lessee of *B.* bring an ejectment against *D.* and verdict for defendant, same may be used as evidence against *B.* *Gilb. L. E. 36.*

A will, partly in form of a deed and will, may be given in evidence as a will. *Vent. 257.*

Where there are three witnesses to a will, one of them proving the other two being present, and attesting same, is good proof, under the statute, of the execution of such will. *2 Will. Rep. 510.*

In ejectment to prove relation of father and son, by the father's will, the original, and not the probate, must be produced. *Tri. N. P. 232.*

A person cannot be a witness in a matter where he is interested, but he may against himself. *2 Atk. Rep. 825.*

In an action brought by an infant, the guardian cannot give evidence of any matter in such action. *MS. Cases C. B.*

An executor is a good evidence in a cause relating to the will of his testator, if he is not a residuary legatee. *3 Will. Rep. 181.*

If an obligee devises a debt to an obligor, and executor delivers up same to him cancelled, he is a good witness to prove testator *compes.* *Gilb. L. Evid. 128.*

Where a hundred is sued on the statute of *Winton*, none of them can be evidence in such suit. *2 Roll. Abr. 685.*

Inhabitants of a village, or freemen of a corporation, may be witnesses in a matter relating

## The Modern Practice of the

to the public, where their private property is not concerned. *Sid.* 109.

In a statute law, where same could not be enforced, otherwise, a party interested may be a witness. *2 Roll. Abr.* 685.

Husband and wife cannot be witness for or against each other in a civil action, but any other relation may. *2 Hawk. P. C.* 433.

Attorney, counsel, or solicitor, may be examined as a witness to what he knew before retained by his client, but not after. *2 Atk. Rep.* 524.

In trespass against a bailiff on goods taken in execution, and *Not guilty* pleaded, evidence must be given of the judgment and writ of execution, shewing the sheriff's warrant is not sufficient. *Gillb. L. E.* 40.

On an action for fees by an attorney, he may prove writ sued out by warrant. *Trin. Ass.* 1701.

## B R I E F.

It must contain an abstract of the interlocutory pleadings between the parties before issue joined; a state of the plaintiff or defendant's case; the supposed objections that will be made to such case, and answers thereto, with proofs of case, and answers to objections to the said case. The practicer, in drawing his brief, cannot be too concise, so he preserves perspicuity.

Form of  
br. ef.

C. P. }  
for the plaintiff }

A. B. plaintiff,  
and  
C. D. defendant.

DECLA-



**DECLARATION, London, ff.—FIRST COUNT.**—Plaintiff declares on an *indebitatus assumpsit*, For that defendant on the first day of June, 1772, at London aforesaid, was indebted to plaintiff in 30l. for divers goods, wares, and merchandizes of the said plaintiff before that time sold and delivered to defendant; and being so indebted, defendant on the day and year aforesaid, promised plaintiff payment for such goods, &c.

**SECOND COUNT.**—*Quantum valebant* for other 30l. for other goods, wares, &c. delivered by plaintiff to defendant.

**THIRD COUNT.**—*Insimul computassit* for other 30l. &c.

*To plaintiff's damage 50l.*

**PLEA.—THE GENERAL ISSUE** *non assumpsit*.

**CASE.**—*Here insert Case, intitling it Plaintiff or Defendant's case, as it may happen to be.*

**PROOFS OF CASE.**

**PROOFS** of answers to objections made by defendant to plaintiff's case.

The Brief, when fair copied for delivery to counsel, must be indorsed to this effect:

|                                    |   |  |
|------------------------------------|---|--|
| <p>A. B.<br/>against<br/>C. D.</p> | } | <p>Brief for the plaintiff.<br/>(or as the case may be).</p> |
|------------------------------------|---|--|

Mr. serjeant B. 5 guineas.

Mr. B. on the same side.

## The Modern Practice of the

Stands tenth in his Lordship's paper for the last sittings in *Trinity Term* at *Guildhall, London*.

R. R.

*plaintiff's attorney.*

It is now usual to give your leading council a guinea *per sheet*, if a matter of importance, and tried by a special jury. This mode of seeing is extended sometimes to five or ten guineas. The others are usually paid half a guinea every brief sheet.

## T R I A L.

When cause is in the paper for trial, it is the duty of the plaintiff and defendant's attorney, to attend the court to see how the causes go off; to take care that their counsel and witnesses have early notice when the same is likely to come on, that they may be ready to perform their respective duties.

If the plaintiff's attorney is absent when cause is called on, the cause may be struck out of the paper by order of the court, and he or his client be subjected to pay the costs of the day, for not trying cause according to notice, or he may be nonsuited.

If defendant's attorney is absent, his client may lose the benefit of his case in defence, and sustain costs.

The court will hear no excuse for the absence of plaintiff's or defendant's attorney, when their duty requires them to be present. They are allowed in their bill for their attendance while cause is in the paper, and till tried, and it is expected and imagined by court that they do attend.

If

If tried by a special jury, the party moving Note.  
for same pays them.

To obtain trial at bar, party requiring same Trial at Bar.  
must move court for a special jury; pay serjeant  
moving same, 10 s. 6 d. and rule will be made  
by court for sheriff to attend prothonotary with  
freeholder's book, at the expence of the party  
moving same. Draw up rule with secondary;  
pay for same 4 s. 6 d. and serve copy on the  
attorney on the other side. The prothonotary, in  
the presence of both attornies, will name out of  
book forty-eight freeholders, twelve of whom  
shall be struck out on each side, and the remain-  
ing twenty-four returned by the sheriff. If  
either attorney neglects to attend, prothonotary  
shall strike out twelve in behalf of the absent  
party.

On trial at bar, the plaintiff's attorney must  
before the essoign day of the term in which the  
same is intended to be tried, give notice to the  
chief prothonotary, or his secondary, of the day  
same is to be tried, that it may be entered in  
court-book, or same will not be tried, unless  
special direction from court on motion for that  
purpose. Rule, *Hilary 9 Ann.*

On trial at bar, the Lord Chief Justice, and  
the other judges, are to have copies of the issue  
delivered to them four days before the time  
appointed for the trial. Rule, *Mich. 3.*  
*Geo. 2.*

The party that moves for Special jury on a  
trial at bar, may at same time move for a View,  
if necessary, and one rule will do for both. In  
that part of rule which directs a view, the court  
orders that a *hab. corp. jurat.* issue directed to  
sheriff, with a clause therein commanding him  
to cause six or more of the jury returned and  
named in writ, to take a view of the matters in  
question previous to trial. By consent of par-  
ties,



ties, or without, by rule or judge's order, a person on each side may be appointed to shew the premisses in question to the jury appointed to view same; the expence of view is to be borne equally by both parties, and neither must offer any evidence to the jury on view.

Special verdicts.

If same be found, plaintiff's attorney must enter proceedings to the end of special verdict on record, and deliver same to secondary in court, and get a serjeant to move for a *consilium*. Draw up rule thereon, and serve it on defendant's attorney; as to paper-books, delivering same to the judges, and entering same for argument; the same steps must be taken as on paper-books, on special pleas and demurrers. Rule, *Easter 27 Car. 2.*

Practical remarks on trials in general.

Day of trial must be appointed by the court, and may be countermanded by plaintiff's attorney, who cannot then try same till a fresh day appointed by court. *MSS. Cases C. B.*

No trials at bar allowed in issuable terms.

Each jurymen out on view, is to be allowed for every day and night 3s. 4d. for diet, besides lodging. Two criers *per* day and night, 2s. each ordinary, besides the charge of the jurors, lodging rule *Mitch. 1654.*

Jurors may be challenged, if under the least degree of influence, interest, or bias. *MSS. Cases C. B.*

Local actions may be tried in the next adjoining county, if the matter cannot be fairly tried in the proper county by leave of court, grounded on a proper affidavit of the fact. *MSS. Cases C. B.*

If verdict goes for party moving for special jury, all expences except actual striking jury, are taxed and allowed against the losing party. *MSS. Cases C. B.*

Trial

Trial by *proviso* is where plaintiff does not proceed to trial according to the course of the court. No trial can be had by *proviso* in London or *Middlesex*, till plaintiff has made default after issue is entered on record; nor in a country cause, till plaintiff has made default in trying his cause the next assizes after issue entered.

To try cause by *proviso*, defendant must get rule for plaintiff to reply and enter issue from secondary, for which you pay for entering 1s. 10d. and serve copy on plaintiff's attorney, who must enter issue within time of rule, and give defendant's attorney number of roll. Issue being entered, defendant may have a *hab. corp. jurat.* by *proviso*. If plaintiff does not enter issue in time, defendant signs a *non prof.* and taxes costs. If plaintiff is straitened in time, he may have summons before a judge for further time to enter issue.

Trials by *proviso* are now out of use, and if plaintiff in any action neglects to bring such action on to be tried, court at any time on motion in open court (*due notice having been given plaintiff thereof*) will give judgment for defendant, as in case of a nonsuit, unless sufficient cause shewn to the contrary, when court will grant time; but if plaintiff neglects to try cause within the time allowed, will give judgment as aforesaid. Stat. 14 Geo. 2.

Modern practice, instead of *proviso*.

To obtain judgment on this statute, give notice of the motion, and on affidavit of the state of the proceedings, and plaintiff's default, and also of the service of notice of motion; upon reading same, issue having been entered, and roll brought into court, court will make a rule *nisi* for defendant, as in case of nonsuit. *Ibid.*

Practical remarks.

If defendant carries down cause, he must give plaintiff same notice of trial as in the common cases, only add in notice, *by proviso*. If not tried or countermanded in time, plaintiff will be intitled to costs against defendant, which he may obtain in the usual way. Notwithstanding defendant gives plaintiff notice, plaintiff may likewise give notice and try cause; for defendant's right of trying same arises only on plaintiff's neglect.

Defendant, before he tries cause, must get rule at secondary's; pay for same 5 s.; purport of rule is, *Let there be made a record of nisi prius by proviso, if the plaintiff hath made default.*

Both plaintiff and defendant may carry down cause for trial at the same time; but same must be tried by plaintiff's record, if he enters it in due time; if he omits so to do, or refuses, defendant may try cause by his record.

Defendant cannot try cause without the rule *let*, &c. if he does, and obtains verdict, court, on motion, will set it aside.

When cause called on for trial, defendant hath a right to call for record, and if a mistake in same, may refuse to make defence. Plaintiff, to avoid a nonsuit and costs, must refuse to pray *tales*, and though jury sworn, if no *tales* prayed, court, in aid of plaintiff, will suffer cause to remain for want of jurors. *MSS. Cases C. B.*

If record agrees with declaration delivered, a variance from issue will not vitiate same.

Court on motion, and affidavit of the fact, in some particular cases, will permit plaintiff to amend, to save a nonsuit, but then will appoint a peremptory day for trial. *Barnes 4to Edit. 317.*

On motion and affidavit of fact, court will sometimes grant an attachment against witness for



for non-attendance, being personally served with *subpoena* in a reasonable time before trial, if sufficient charges of attendance tendered him on such service; but the old method was for the party aggrieved to bring his action on stat. 5 *Eliz.* Barnes 4to Edit. 33.

## P O S T E A S.

AFTERWARDS, on the day, and at the place within mentioned, before Sir *William De Grey*, Knight, the Chief Justice within written, *Thomas Lloyd*, Gentleman, being associated unto the said Chief Justice by force of the statute in that case made and provided, the within *A. B.* plaintiff, came by his attorney within contained, and the within *C. D.* defendant, although solemnly required, came not there, but made default, therefore let the jurors of the jury within mentioned be taken against him by his default: And the jurors of the jury being summoned came, who, to say the truth of the within contents, being chosen, tried, and sworn, say, upon their oaths, That the within-named *C. D.* did assume and promise in manner and form as the within-named *A. B.* within complains against him: And they assess the damages of the said *A. B.* by occasion of the not performing the within-mentioned promises and assumptions, over and above his costs and charges by him about his suit in this behalf expended, to            pounds, and for those costs and charges to forty shillings: Therefore, &c.

Form of  
Postea in  
case, on de-  
fault for  
plaintiff.

AFTERWARDS, on the day, and at the place within-mentioned, before *(here insert the justices of assize, as described in commission)* Postea for default at assizes.

son) justices of our said Lord the King, of his Common Bench, appointed to hold the assizes in the said county of \_\_\_\_\_ by force of the statute in that case made and provided, the within-named *A. B.* plaintiff, &c. as in a town cause.

Postea in  
case on ver-  
dict.

AFTERWARDS, &c. (*as before*) come as well the within-named *A. B.* plaintiff, as the within-named *C. D.* defendant, by their attornies within contained, and the jurors of the jury being summoned, came to declare the truth of the matter within contained, and being chosen, tried, and sworn upon their oaths, say, That, &c. as in former postea, *mutatis mutandis*.

Postea where  
guilty as to  
part only.

\_\_\_\_\_ say, upon their oaths, That the said *C. D.* the defendant, as to the trespass and ejectment of one moiety of the within-written tenements, is guilty thereof, as the said *A. B.* plaintiff within complains against him; and they assess, &c. (*as before*) And as to the trespass and ejectment of the other moiety of the tenements within written, the said jurors say upon their oaths, That the said *C. D.* is not guilty thereof, as the said *A. B.* has by his within pleading alledged: Therefore, &c.

Postea in  
trespass,  
where one  
defendant  
guilty, and  
others not.

\_\_\_\_\_ say upon their oaths, That the said *C. D.* is guilty of the trespass within-mentioned, as the said *A. B.* hath within thereof complained against him; and they assess, &c. And the said jury further upon their said oaths say, That the said *E. F.* and *G. H.* the other defendants, are not guilty of the said trespass as the said *E. F.* and *G. H.* within by pleading have for themselves alledged: Therefore, &c.

say

\_\_\_\_\_ say upon their Postea for  
oaths, That the within-named *C. D.* (*the testa-* defendant  
*tor*) did not in his lifetime undertake in manner when execu-  
and form as the said *A. B.* hath within declared tor, that his  
against him, &c. testator non  
assumpsit.

\_\_\_\_\_ say upon their Postea for  
oaths, That the said *C. D.* did not at any time defendant on  
within six years next before the suing out the the statute of  
original writ (*here insert charge in declaration* limitations  
*against defendant*), &c. pleaded.

\_\_\_\_\_ and the jurors Postea on  
of that jury being summoned came, who, to nonsuit.  
say the truth of the matters within contained,  
were chosen, tried, and sworn, and after evi-  
dence being given them, of upon and concern-  
ing the matters within contained, went from the  
bar of this court to consult of their verdict of  
and upon the said premises; and after the said  
jury had so consulted and agreed among them-  
selves, they returned to the said bar in order to  
give their verdict in this behalf, upon which the  
said *A. B.* being solemnly required, came not,  
nor did he further prosecute his said bill against  
the said *C. D.* Therefore, &c.

\_\_\_\_\_ were chosen, Postea where  
tried, and sworn to declare the truth of the a juror is  
matters within contained, whereupon, for cer- withdrawn.  
tain cause moving as well the said Chief Justice,  
as the said plaintiff and defendant, *E. F.* one of  
the jurors of the within-mentioned jury was  
withdrawn from the panel thereof, and the re-  
sidue of the jurors of that jury are entirely dis-  
charged from giving any verdict of and concern-  
ing the premises within-mentioned, &c.

and



*Postea* with  
a tales in  
town for  
defendant.

and the jurors of the jury being summoned, some of them, namely, (*here insert such of the jury as appear*) come and are sworn upon that jury, and because the residue of the jurors of the same jury did not appear, therefore other persons of those standing by the court of the sheriff of the county aforesaid, at the request of the said *A. B.* the plaintiff, and by the command of the said Chief Justice, are newly set down, whose names are affixed in the within-written panel, according to the form of the statute in that case made and provided; which said jurors so newly set down, namely, (*here insert the tales men by name*) being likewise called, come, who, together with the said other jurors being impanelled and sworn to declare the truth of the matters within contained, being elected, tried, and sworn upon their oaths, say, That the within-named *C. D.* did not undertake in such manner, &c.

*Postea* with  
a tales in a  
country  
cause,

The same form in *postea* with *tales*, in a cause tried at the assizes, only describe the justices of assize as directed under common *postea* in a country cause.

*Posteas* with *tales* are now seldom wanted but on special jury causes, where it sometimes happens that twelve out of the twenty-four do not attend.

In this court, the associate gets the record stamped, and indorses *postea*. If the cause is tried in term, he will deliver same about the fifth day after trial. If tried in *vacation*, you may have same in the first week of subsequent term. If no more than one issue, charge of *postea* is included in the fee of 16s. taken by associate in court; for every other issue he charges

charges 2 s. on returning *postea*. Rule, *Easter*  
2 Jac. 2. C. B.

There is no rule for judgment given on the *postea* or inquiry in this court, but you must stay the four days exclusive, as in the K. B. before you sign judgment.

When time is out, take *postea* or inquiry with Signing the papers in the cause to prothonotary, who judgment on *postea* or inquiry. will sign judgment and tax costs.

When judgment is signed, and costs taxed on *postea* or inquiry, the record or inquisition must be delivered to the clerk of the judgments for him to keep, nor can it be taken out of the office afterwards, without leave of court on motion. Rule, *Trin.* 13 Geo. 2.

If the party against whom a verdict is obtained by trial or inquiry, has a mind to be present on taxing costs on final judgment, he must get treasury rule from secondary to be present at taxing costs; pay for rule 4 s. It must be served on the attorney on the other side, and should be taken out and served before time for signing judgment is out, or execution may issue against the party. If final judgment is not signed, and party takes out and serves rule to be present, &c. after time for signing judgment is out, the attorney is not obliged to give him more than three or four hours notice of taxing costs; but if taken out and served within the time, attorney on the other side must give twenty-four hours notice when he intends to tax costs.

If the party against whom a verdict is obtained on trial or judgment on inquiry, would have a new trial or inquisition, or would arrest judgment on either, he must do it; if on verdict before the appearance day of the return of judgment. the *hab. corp. jurat.* and on inquiry before the time given to move in arrest of judgment is expired,  
S

Directions for obtaining a new trial, or moving in arrest of judgment.

pired, unless the foundation of the motion in either case is on some matter afterwards discovered.

This is done by motion of court, supported on an affidavit of the facts. If new trial or inquisition is denied, party may afterwards move on affidavit to arrest judgment in either case; but if the motion in arrest of judgment is first tried and denied, party moving same cannot afterwards by motion obtain new trial or inquisition.

To move in arrest of judgment on *possea* or inquiry, party must first move for rule to bring *possea* or inquisition into court. This rule must be drawn up with the secondary; pay for same 5s. and serve copy on attorney on the other side; this done, affidavit must be made of service of rule, and that annexed to affidavit of ground on which you move in arrest of judgment; it must be given to a serjeant with 1 l. 1 s. and he will move same.

Practical remarks.

If plaintiff be suspended for a year by injunction of court from taking out execution, he must have a *sci. fa.* to revive judgment, though delayed by injunction out of Chancery. *Pract. Reg. C. P.* 377.

After writ of error brought, if plaintiff delays signing final judgment, till the writ of error is returnable, and then brings action of debt on such judgment, court will set it aside, and oblige plaintiff to be at the expence of a new writ. *Earnes 4th Edit.* 250.

Plaintiff or defendant on obtaining final judgment in case, on verdict or inquiry, may bring an action of debt on such judgment, and proceed to judgment and execution thereon. This is frequently done where the sum recovered is but small, and defendant is likely to stand his ground, because plaintiff cannot upon levy, oblige



oblige defendant to pay more than the costs taxed by prothonotary.

Court will not arrest judgment on a matter that party might have availed himself of before issue joined. *MSS. Cases.*

Where any matter of title is in dispute, and defendant obtains a verdict, court will not grant plaintiff a new trial, unless the revenue is concerned. *Barnes 4to Edit. 440.*

Plaintiff cannot have a new trial where verdict for defendant on a penal statute. *Barnes 4to Edit. 464.*

## PROCEEDINGS on Cause being referred.

Apply to Mr. Thomas Lloyd the associate, at his chambers, in *Lincoln's Inn, New Square*, for order of reference; if one cause referred only, he charges for the order 4 s. 6 d. if more, his charge for same is in proportion to its length.

Such witnesses as plaintiff or defendant proposes to examine on the reference, their respective attornies set down on a piece of paper, and deliver their names to the crier of the court, who will immediately after trial, upon the witnesses being brought up to the bar of the court, swear same. Each party pays 2 s. to the crier for every witness sworn to give testimony on their behalf.

|   |  |
|---|--|
| <p><i>London</i>, to wit,<br/> <i>or wherever venue laid.</i></p> | <p>At the sitting of <i>nisi</i> <small>Form of order of reference where one cause referred.</small><br/> <i>prius</i>, held at<br/> in and for the<br/> on the<br/> day of 1772,<br/> and in the 12th year<br/> of the reign of our Sovereign Lord George the<br/> S 2 Third,</p> |
|---|--|

Third, now King of Great Britain, &c. before the Right Honourable Sir *William de Grey*, Knight, our Chief Justice assigned to hold pleas in our court of Common Bench at *Westminster*, (or if at assizes, before the judges of assize).

*A.* } IT IS ORDERED by the court, by  
against } and with the consent of the plaintiff

*B.* } and defendant, their counsel and  
attornies, That the last juryman sworn and impanelled in this cause, be withdrawn out of the panel, and that all matters in difference between the said parties in this cause be referred to the award, order, arbitrement, final end and determination of *S. P.* of, &c. so as he shall make and publish his award in writing of and concerning the premises in question between the said parties, on or before the day of                      term next ensuing: And that the said parties shall and do perform, fulfil, and keep such award so to be made by the said arbitrator as aforesaid: AND IT IS ALSO ORDERED by and with such consent as aforesaid, That the costs of this suit, and also the costs of the said arbitration are to abide the event of the said award, and that the said arbitrator do direct and award by whom, and to whom, and in what manner the same shall be paid: AND IT IS LIKEWISE ORDERED by and with such consent as aforesaid, That the plaintiff and defendant respectively, are to be examined upon oath to be sworn before the said Lord Chief Justice, or some other justice of the court of the said Lord the King, of the bench, if thought necessary by the said arbitrator; and

and do produce before the said arbitrator, all books, papers and writings touching and relating to the premises, as the said arbitrator shall think fit: And that the witnesses for the plaintiff and defendant respectively, are to be examined upon oath to be sworn before the said Lord Chief Justice, or one other Justice of the court of the said Lord the King, of the bench: **AND IT IS ALSO ORDERED**, by and with such consent as aforesaid, That neither the plaintiff or defendant shall prosecute any action or suit in any court of law or equity against the said arbitrator, or bring or prefer any bill in equity against each other of and concerning the premises so as aforesaid referred: **AND IT IS FURTHER ORDERED** by and with such consent as aforesaid, That if either party shall, by affected delay, or otherwise, wilfully prevent the said arbitrator from making an award, he shall pay such costs to the other as the court shall think reasonable and just: **AND LASTLY, IT IS ORDERED**, by the like consent as aforesaid, That the court of the said Lord the King, of the bench, may be prayed that this order may be made a rule of the same court.

Thomas Lloyd, }  
associate.

By the court.

A. } \_\_\_\_\_ and that  
against } all matters in difference between  
B. } the said parties in this cause, and  
also in } other causes now at issue between the  
same parties in this honourable court, for (*men- Form of or-  
tion cause of actions*) be referred, &c. AND IT der of refe-  
IS FURTHER ORDERED, by and with such rence where  
consent as aforesaid, That the costs of this cause, several causes  
and also the costs of the said other causes referred.  
respectively, and of the arbitration, are to be in  
the discretion of the said arbitrator, &c. and  
that the witnesses for the plaintiff and defendant



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in the said causes respectively, are to be examined upon oath, to be sworn before, &c. &c.

Note of witnesses to be sworn.

A. } A. the plaintiff, and C. D. E. F. &c.  
against } produced by the plaintiff, were severally sworn to give evidence before the arbitrator in this cause touching all matters in difference to him referred this day of 1772, before

De Grey, or judge before whom sworn.

Note,—Same form for defendant.

**Observation.** It is best for both attornies to get their witnesses sworn in court, or otherwise their clients must be at the expence of bringing their witnesses before a judge to be sworn. In either case, the above is the proper form of note for swearing witnesses.

It is usual for plaintiff's attorney to get an appointment from arbitrator, which, when obtained, he inserts at the bottom of the order of reference thus:

Arbitrator's appointment to sit on reference.

I do appoint *Thursday* the \_\_\_\_\_ day of \_\_\_\_\_ this instant \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ morning, at the sign of the \_\_\_\_\_ tavern, in \_\_\_\_\_ street, kept by Mr. \_\_\_\_\_ to sit upon the matters and things above referred to me. Dated \_\_\_\_\_ of \_\_\_\_\_ 1772.  
Witness } G. P.  
R. R. plaintiff's attorney. }

Practical remarks.

When plaintiff's attorney gets the appointment of day of reference from the arbitrator, he delivers to him an exact copy of the order of reference, and also a short brief of his client's case, with the names of the witnesses sworn to be examined thereto. His next step is to serve defendant's attorney with an exact copy of order of reference, and arbitrator's appointment thereon;

thereon; this should be examined carefully with the original order and appointment by the person who serves it, in order that he may be able to make an affidavit thereof, if necessary.

Defendant's attorney also furnishes arbitrator with a short brief of his client's case, and names of witnesses sworn in support of same.

On day of reference, it is settled between the attorneys on both sides, and arbitrator, how they shall proceed, and whether the parties themselves shall or shall not be present during the examination of the matter. This done, plaintiff's attorney opens his client's case to arbitrator, calls his witnesses, and examines them in support of same, and then defendant's attorney enters upon his defence in the same manner.

Both parties have a right to cross examine the witnesses on the other side during their examination, and on summing up the evidence, have a right to reply to any matters offered against the case made out on evidence for their respective clients.

The arbitrator takes minutes of the evidence offered on both sides, and generally appoints a future day for making his award in writing.

If either party is fearful that arbitrator has not been correct or attentive in taking down the evidence given before him, he has a right to deliver him a short brief of the evidence offered on both sides, to aid him in making his award; but in this case, party must be careful to offer nothing to arbitrator but what was actually given in evidence before him, lest any apparent fallacy should prejudice his client's cause in the breast of arbitrator, whose award is decisive between the parties, unless it can be clearly proved to the court he has made an award in direct opposition to evidence.

Arbitrator's attorney draws up the award from the minutes taken by arbitrator.

If

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If the business is long and intricate, arbitrator may adjourn the matter referred, as suits his conveniency, so that he makes his award within the time limited by order of reference.

It is most prudent for arbitrator's attorney to give the attornies on both sides notice in writing of these adjournments, that they may have no pretence for non-attendance, or room to suspect the least partiality in arbitrator.

If arbitrator cannot, or does not, make his award within the time limited by order, either party, on affidavit of the reasons why same is not done, may on motion of court procure an enlargement of the time. The party moving to enlarge time must give the other a written notice of his intention, and on motion must annex an affidavit of service thereof to the former affidavit. If court grants further time, party moving same draws up a rule with secondary, and pays for same 5s. a copy of which is to be served on arbitrator; and on his fixing a further time to sit on the business, must also, together with a copy of his appointment, be served on the attorney on the other side.

Form of  
award.

TO ALL TO WHOM *these presents shall come*, G. P. of, &c. SENDETH Greeting :  
WHEREAS at the sitting of *nisi prius*, held at  
in and for the on the  
day of one thousand seven hundred  
and seventy-two, and in the twelfth year of the  
reign of our Sovereign Lord George the Third,  
now King of *Great Britain*, and so forth, before  
the Right Honourable Sir William De Grey,  
Knight, Chief Justice of our said Lord the King,  
of the bench, a cause came on to be heard between  
*A. B.* plaintiff, and *C. D.* defendant: AND IT  
WAS ORDERED by the said court, by  
and with the consent of the plaintiff and defend-  
ant, their counsel and attornies, that the last  
juryman



juryman sworn and impanelled in the said cause, be withdrawn out of the panel, and that all matters in difference between the said parties in the said cause be referred to the award, order, arbitrement, final end and determination of the said G. P. in the said order of reference, called G. P. of, &c. so as he should make and publish his award in writing of and concerning the premises in question between the said parties on or before the day of term then and now next ensuing, and that the said parties should perform, fulfil, and keep such award so to be made by the said arbitrator as aforesaid: AND IT WAS ALSO ORDERED by and with such consent as aforesaid, that the costs of the said suit, and also the costs of the said award, should abide the event of the said award, and that the said arbitrator do direct and award by whom, and to whom, and in what manner the same should be paid: AND IT WAS LIKEWISE ORDERED by and with such consent as aforesaid, That the plaintiff and defendant respectively were to be examined upon oath to be sworn before the said Lord Chief Justice, or some other Justice of the court of the said Lord the King, of the bench, (*if thought necessary*) by the said arbitrator, and should produce before the said arbitrator, all books, papers, and writings touching and relating to the premises, as the said arbitrator should think fit; and that the witnesses for the plaintiff and defendant respectively, were to be examined upon oath to be sworn before the said Lord Chief Justice, or some other Justice of the court of the said Lord the King, of the bench: AND IT WAS ALSO ORDERED by and with such consent as aforesaid, That neither the plaintiff or the defendant should prosecute any action or suit in any court of law or equity against the said arbitrator, or bring or prefer any bill in equity against each other of and concerning

cerning the premises so as aforesaid referred, as by the order of reference made on the hearing of the said cause, relation being thereunto had, it may more fully appear: NOW THESE PRESENTS WITNESS, That I the said G. P. the arbitrator named and appointed in and by the said order of reference, having duly taken upon me the burthen of the above arbitration, and having been attended by the attorney for the plaintiff *A. B.* and the attorney for the defendant *C. D.* and fully heard their several allegations on behalf of the said plaintiff and defendant respectively, and having examined the said plaintiff and defendant respectively upon oath, and strictly examined their, and each and every of their witnesses severally on oath, touching the matters to me above referred, and having maturely and deliberately weighed and considered the evidence, proofs and allegations on behalf of each of the said parties, and carefully perused all the accounts, papers, and writings touching the said matters in question, which they the said parties have respectively thought proper to lay before me for my inspection, DO in obedience to the said order of reference, make this my award in writing of and concerning the premises to me referred as aforesaid, in manner following, That is to say, FIRST, I do award and order that the said *C. D.* his heirs, executors, or administrators, some or one of them do and shall on *Monday*, the                      day of                      one thousand seven hundred and seventy-two, at the house of Mr.                      attorney at law, situate in *Cheapside*, *London*, between the hours of twelve of the clock at noon, and one of the clock in the afternoon, well and truly pay, or cause to be paid, to the said *A. B.* his executors, administrators, or assigns, the sum of seventeen pounds seven shillings and ninepence, of good and lawful money of *Great Britain*, together with

with  
suit  
time  
and  
they  
nera  
actio  
wha  
to th  
sever  
awar  
*A. B.*  
tive  
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with his the said *A. B.*'s full costs of the said suit herein before mentioned, to be in the mean time taxed by the proper officer of the said court; and that immediately after payment thereof, they the said *A. B.* and *C. D.* shall execute general releases each to the other of them of all actions, suits, costs, claims, and demands whatsoever, from the beginning of the world, to the said        day of        one thousand seven hundred and seventy-two: AND I do award and order, that each of them the said *A. B.* and *C. D.* shall bear and pay his respective charges and expences attending this arbitration: AND LASTLY, I award that the charges incurred by me relating to this arbitration, and making this my award, amounting to the sum of        shall immediately after the delivery of this my award, be paid to Mr. *D. E.* my attorney employed in this arbitration, one half thereof to be paid by the said *A. B.* and the other half thereof to be paid by the said *C. D.* IN WITNESS whereof, I the said *G. P.* have to two parts of this my award set my hand and seal, this        day of        in the twelfth year of the reign of our Sovereign Lord *George*, &c. and in the year of our Lord 1772.

*Signed, sealed, published, and  
declared by the said G. P. as  
and for his award, (being  
first duly stamped) in the pre-  
sence of*

*G. P.* (L. S.)

*T. H.*

*W. G.*

It is usual, on award's being drawn up, for Observa-  
arbitrator's attorney to give the attornies on both tions.  
sides notice of its being ready for delivery, that  
each may take away his part, and pay for  
same. If party in whose favour award is made,  
takes his part, and the other neglects coming to  
receive



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receive his, it will be necessary for the winning party to get arbitrator to tender, or cause to be tendered, his award to the losing party, in order that upon refusal to accept same, a rule may be obtained on affidavit to make the order of reference a rule of court. This rule is drawn up by the secondary; pay for same 5 s. and serve a copy on refractory attorney.

Note.

The costs at law are taxed by the prothonotary on the order of *nisi prius*, and he is governed by same in such taxation.

If order not complied with within the time directed by rule on affidavit of service, move for an attachment against the party, and draw up order thereon with secondary; pay for same 5 s. carry this order to the Crown Office, and bespeak attachment; pay for same 13 s. 4 d. get warrant thereon at the Sheriff's Office of the county where the party to be attached resides. If he is taken on attachment, court will not discharge him till he has fully complied with the award, and satisfied all costs incurred thro' his contempt.

Note.

After award made, the party in whose favour same is given, takes record from Mr. Lloyd, with *possea* indorsed, and completes judgment.

### JUDGMENT *on* NON PROS, *and* by CONFESSION.

#### NON PROS.

**Observations** If plaintiff does not declare against defendant on Non pros. in two terms after writ sued out, *viz.* before the end of second term of which writ was returnable, (*if defendant is not in custody*) he must take out rule from secondary for further time to declare; if in term, he may have further time till last day of term; if in vacation, till the first day

day of subsequent term. You pay for these rules 4s. each. A copy must be served on defendant's attorney.

If this step is not taken in due time, defendant may sign a *non pros* against plaintiff for want of declaration.

Plaintiff is likewise liable to a *non pros*, if he does not enter issue and bring in record in due time after being served with rule for that purpose by defendant; and the same, if he neglects to reply, &c. in special pleading, after being served with rule by defendant so to do, and a demand made in writing.

In this court, the defendant must, before the end of second term, or within four days after, give a rule with secondary for plaintiff to declare and demand a declaration in writing of plaintiff's attorney thus. Rule, *Micb. 1 Geo. 2. C. B.*

C. B.

A.  
against  
B.

S I R,

The defendant demands a declaration in this cause, otherwise judgment.

To C. B.

plaintiff's attorney.

Your's, &c.

R. R.

defendant's attorney.

10th Nov. 1772.

If plaintiff does not declare before rule is out, Note. (*it being a four-day rule exclusive*), defendant having demanded declaration in writing as aforesaid, may at any time in the vacation after the second term, sign a *non pros* for want of declaration, but not afterwards. Rule, *Hilary 9 Ann. C. B.*

You sign a *non pros* in same manner as interlocutory judgment, viz. by making *incipitur* of declaration on sheet of double half crown paper, Manner of signing non-pros.

T

paper,

paper, and same on a roll; carry them with declaration to the prothonotary, who will sign judgment; he charges for same according to the length of proceedings.

What it is.

A *non pros* is in the nature of a final judgment, for the costs defendant hath sustained by plaintiff prosecuting his suit against him without effect, defendant on signing a *non pros*, hath his costs taxed by prothonotary, and may then take out execution for the same, as on final judgment, or he may bring an action for such costs against the plaintiff.

### CONFESSIO N.

Judgment by  
confession.

Where defendant hath no real defence to action brought against him, it is usual in practice for his attorney to apply to plaintiff's attorney, and offer a *cognovit*. This saves defendant the expence of inquiry, and puts plaintiff into the possession of a final judgment, without the expence and trouble of prosecuting the suit thereto.

It behoves plaintiff's attorney, in taking *cognovit*, to restrain defendant from bringing a writ of error or bill in equity on such judgment. If the action is in case, it is most adviseable for plaintiff's attorney to take a warrant of attorney to confess judgment for the debt and damages; in which he must draw the confession in debt, which will intitle his client to the costs of entering up and executing judgment.

A *cognovit* may be wrote on draft, declaration, or on plea, demurrer, &c. and should be witnessed by defendant's attorney, to shew it is the act of his client with his advice.

Form of  
*cognovit* on  
demurrer.

I the said C. D. do hereby withdraw the above demurrer, and consent that the plaintiff take judgment for the debt of                      l. declared on, besides



besides I, for damages and costs of suit, so that execution be stayed until (*the time agreed by plaintiff to allow defendant to pay debt and costs*): And I do hereby consent not to bring any writ of error or bill in equity on such judgment; and do submit that this my consent be made a rule of his Majesty's court of Common Bench at *Westminster*, if the court shall so please. As witness my hand, the      day of

1772.

Witness

C. D.

C. B. *defendant's attorney.*

To (here insert two or three at- Warrant of  
tornies names of C. B.) at- attorney to  
tornies of his Majesty's court of confess judg-  
Common Bench, at *Westminster*, ment.  
jointly and severally, or to any  
other attorney of the same  
same.

THESE are to desire and authorise you, the attornies abovenamed, or any of you, or any other attorney of the court of Common Bench aforesaid, to appear for me C. D. late of, &c. in the said court, as of this present *Michaelmas Term*, *Hilary Term* next, or any other subsequent term; (*this must be varied according to the circumstances of case, viz. if made in vacation, and you want to enter up judgment in vacation, you must insert the term preceding that vacation*); and then and there to receive a declaration for me in an action of debt for      l. (*generally double the sum due*) for money lent at the suit of A. B. of, &c. And thereupon to confess the same action, or else to suffer a judgment by *non sum informatus*, or otherwise to pass against me in the same action; and to be thereupon forthwith entered up against me of record, as of this present *Michaelmas Term*, *Hilary Term* next, or

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any other subsequent term for the said ( . . . l.) besides costs of suit: And for your so doing, this shall be to you, or one of you, a sufficient warrant and authority: And I do hereby consent to bring no writ of error or bill in equity, on any judgment to be entered up against me by virtue of these presents: And I do submit that this my consent shall be made a rule of the said court of Common Bench, on the first, or any other day of                      term next. In witness whereof, I the said C. D. have hereunto set my hand and seal, this                      day of 1772.

Sealed, &amp;c.

J. T.

R. S.

C. D. (L. S.)

This warrant of attorney must be ingrossed on a sheet of half crown stamped paper.

Defeasance  
to be indor-  
sed on back  
of warrant.

BE IT REMEMBERED, That it was agreed between the parties within named, at the time of the execution of the within-written warrant, that the same was made and given for securing the payment of the sum of (*the real sum, interest, and costs due*) on a certain promissory note, bearing date the                      day of                      last, under the hand of the said C. D. for payment of l. to one Mr. E. G. or order, and by him indorsed to the said A. B. And it is further agreed, between the said parties, that no judgment shall be entered up by virtue of the within-written warrant of attorney, until the                      day of                      next, unless the life of the said C. D. is despaired of. In witness whereof, the said parties within named have hereunto set their hands the day and year within written.

Witness

J. T.

R. S.

A. B.

or R. R. his attorney  
for him.

This

This defeasance must be varied according to the nature of the case. Practical remarks.

It hath been held by this court, that plaintiff hath two terms to declare in after appearance entered or bail perfected. *P. R. C. B. 121.*

It is the most safe way for plaintiff, when he takes *cognovit* from defendant to let his (*defendant's attorney*) witness same.

A warrant of attorney given after continuance day of term, to enter up judgment of preceding term, is good, if the warrant is dated of such term judgment is to be entered of; but otherwise if given to confess judgment generally, and dated after. *1 Vent. 113.*

If given to be entered of a certain term, it must be entered of such term, or the judgment may be set aside. *1 Mod. 1.*

If warrant given to confess judgment generally, or of any particular term, or any other subsequent term, it may be entered of any subsequent term; but if not entered within four terms next after the date of warrant, court must be moved on affidavit made of due execution of warrant, that defendant is living, and that debt or part thereof is unsatisfied. If otherwise, court on motion will set same aside. On this motion, you draw up rule with secondary, which must be shewn to prothonotary to authorize him to sign judgment. *Barnes 4to Edit.*

This may be done on same affidavit before a judge, in vacation, and he will make an order for judgment to be entered up. *MS. Cases, C. B.*

Plaintiff, before he signs judgment against defendant, on warrant of attorney, should enter an appearance for defendant, or it is error.

Court will not permit warrant of attorney of above a year and a day standing to be entered up, if party to whom same was given is dead.



A person in custody confessing judgment to the plaintiff, at whose suit he is in custody, must have an attorney of this court or the K. B. on his behalf present when he signs same; and must subscribe his name as a witness and attorney for defendant, or court, on motion, will set same aside. This doctrine is confined to the particular cause on which he is in custody, and not as to a warrant given in any other suit. Rule, *Hilary* 14 & 15 *Car.* 2. C. B.

Warrant of attorney given by a person in custody, must be read over by or to him before executed, or same may be set aside on motion for irregularity. Rule, *Trin.* 14 & 15 *Geo.* 2. C. B.

If warrant of attorney given by a woman while sole, who, before judgment entered up, marries, leave of court must be obtained before same can be entered up. *MSS. Cases, C. B.*

A person in execution may give a warrant of attorney to confess a new judgment, without the presence of an attorney. *Ibid.*

A person in custody, if another becomes bound for him for that debt, he may give such surety a warrant of attorney, without an attorney being present on his behalf. *Ibid.*

No warrant of attorney good that shall be taken by any officer or bailiff from a person in his custody, unless attorney on prisoner's behalf present at giving same, and shall sign his name as a witness thereto. If this step is not taken, court will punish officer, and set judgment entered up thereon aside, on motion. Rule, *Hilary* 14 & 15 *Car.* 2. C. B.

The principle on which the court ground this doctrine, is, that defendant shall not be subjected to any practices of plaintiff, and that his attorney may see that it is done without *duress* of imprisonment. 2 *R. Raym.* 797.

## EXECUTIONS.

The common executions are *capias ad satisfaciendum*, against the party's body; the *fi. fa.*, against the goods and chattels; and the *elegit*, against all the goods and chattels, and a moiety of the defendant's lands. Stat. 13 *Ed.*

1. & 25 *Ed.* 3.

These writs are all ingrossed on a 2 s. piece of stamped parchment. You pay stationer for each 2 s. 2 d. The *ca. fa. fi. fa.* and *elegit*, are signed by prothonotary; pay signing *ca. fa.* and *fi. fa.* 4 d. each. Sealing at seal office 7 d. each. Pay prothonotary signing *elegit* 1 s. 8 d. sealing 7 d. Note.

If plaintiff doth not take out execution upon his judgment in a year and day, or if either of the parties die, he then must revive judgment by *sci. facias*, directed into county where original action brought, before he can take out execution. Stat. 8 & 9 *W.* 3. Observations.

It is a writ to warn defendant that he may shew cause to court, (if he hath any) why plaintiff should not have execution. Note.

If *fi. fa.* taken out within the year, and *nulla bona* return thereon by sheriff, and same continued on roll from term to term, till defendant appears, *sci. fa.* unnecessary. *MSS. Cases, C. B.*

If you take out *ca. fa.* and charge the body in execution, you can have no remedy against the goods or lands, except defendant escape or is privileged, or where defendant dies in execution;

## The Modern Practice of the

cution; then plaintiff may have an *elegit* against his lands, or a *fi. fa.* against his goods in the hands of an executor. Stat. 21 *James* 1.

Where part is levied upon goods, &c. on an *elegit*; or *fi. fa.* another *fi. fa. elegit*, or a *ca. sa.* may be sued out for the remainder; but if any of these executions be returned executed, and filed, the party can never have any other execution on that judgment; for there can be but one execution executed with satisfaction on one judgment; and the returning and filing the writ makes it an execution executed. *MSS. Cases, C. B. Hob. 58.*

Ca. Sa.  
in case.

George the Third, &c. To the sheriffs of *London*, greeting: We command you, that you take *C. D.* late of, &c. if he be found in your bailiwick, and safely keep him, so that you may have his body before our justices at *Westminster*, on (*the return you make writ of*) to satisfy *A. B.* (*here insert the debt and costs taxed*) for his expences and costs which he hath sustained by reason of the not performing of certain promises and undertakings made to the said *A.* by him the said *C.* whereof the said *C.* is convicted: And have there this writ. Witness Sir *William De Grey*, Knight, at *Westminster*, the (*if in term, the first day of term; if in vacation, the last day of the preceding term*) in the 12th year of our reign.

Indorse attorney's name,  
and day, month, and }  
year, sued out.

In debt, covenant, trespass, &c. vary same as directed under the head of *fi. fa.*

Fi. Fa.  
in case.

George the Third, &c. To the sheriffs of *London*, greeting: We command you, that of the goods and chattels of *C. D.* late of, &c. found



found in your bailiwick, you cause to be made *(here insert the debt and costs taxed)* which *A. B.* in our court before our justices at *Westminster*, recovered against the said *C.* for his expences and costs which he sustained, by reason of the not performing certain promises and undertakings made to the said *A.* by him the said *C.* whereof the said *C.* is convicted; and have you the said monies before our justices at *Westminster*, on *(the return you make writ of)* to render to the said *A.* for his expences and costs aforesaid: And have there this writ. Witness Sir *William De Grey*, Knight, at *Westminster*, *(teste according to directions in former writ)* in the 12th year of our reign.

Indorse as in former writ, and add,  
*Lewy the whole, besides sheriff's*  
*poundage, and costs of levy.*

Say recovered against him for a certain debt, *Debt.*  
*&c.* as of sixty-three shillings, which in our said court, were adjudged to the said *A.* for his damages which he had sustained by occasion of detaining that debt, whereof, *&c.*

Say for his damages which he had by occa- *Covenant.*  
 sion of the not performing a covenant, *(or co-*  
*venants, as the case is)* made between the said  
*C.* and the said *A.* According, *&c.*

Say, By occasion of a certain trespass done *Trespass.*  
 to the said *A.* by the said *C.* with force and  
 arms, and against our peace, at *London*, in your  
 county.

Say, That you cause to be made *(the debt and* *Against an*  
*costs)* of the goods and chattels which were of *executor.*  
*(the testator)* at the time of his death, in the  
 hands and custody of *C.* executor of the last will  
 and testament of the said *(testator)* in your bai-  
 liwick which the said *A.* in our court, *(as be-*  
*fore, to the words,* whereof he is convicted,  
 if

if he should have so much in his hands; and if he should not have so much in his hands, then the damages aforesaid, (*if in debt*); if in case, then say, the said expences and costs (*because the whole demand in case consists of damages*) of the proper goods and chattels of the said C. the executor; and have you the money, &c.

Administra-  
tor.

Against  
plaintiff for  
costs award-  
ed defend-  
ant.

The same *mutatis mutandis*.

That you cause to be made (*the debt and costs*) of the goods and chattels of A. in your bailiwick, which were by this court awarded, according to the form of the statute in that case made and provided, to C. for his expences and costs in his defence in a certain action (*as the action is*) at the suit of the said A. and have you the money, &c.

If judgment  
revived by  
*sci. fa.*

If you revive judgment by *sci. fa.* then in *ca. fa.* or *fi. fa.* after the words—whereof he is convicted. Add, And whereupon it is considered, in our said court, that the said A. have his execution against the said C. of the damages aforesaid, (*or debt and damages, as the case is*); by default of the said C. And have there, &c.

Note.

You may have a *testatum ca. fa.* or *fi. fa.* but in both cases, *ca. fa.* and *fi. fa.* must be returned by the sheriff, that defendant is not to be found, or has no goods in his bailiwick before these writs issue, because they are grounded on the deficiency of the first process.

Form of test.  
*ca. fa.* in  
case.

George the Third, &c. To the sheriff of Surry, greeting: We command you, that you take C. D. late of, &c. if he be found in your bailiwick, and safely keep him, so that you may have his body before our justices at Westminster, on (*the return*) to satisfy A. B. (*here insert debt and costs taxed*) for his expences and costs which he hath sustained by reason of the not performing of certain promises and undertaking made to the said A. by him the said C. whereof the said C. is  
con-

convicted: And whereupon our sheriffs of London sent to our justices at Westminster, at a certain day now past, that the said C. was not found in his bailiwick: WHEREAS it is testified in our said court, that he lurketh and secreteth himself in your county: And have there this writ. Witness Sir William De Grey, Knight, at Westminster, (*here insert tesse of writ*) in the 12th year of our reign.

*Indorse same as directed on ca. sa.*

George the Third, &c. To the sheriff of Surrey, greeting: We command you, that of the goods and chattels of C. D. late of, &c. found in your bailiwick, you cause to be made (*here insert debt and costs taxed*) which A. B. in our court before our justices at Westminster, recovered against the said C. for his expences and costs which he sustained by reason of the not performing certain promises and undertakings made to the said A. by him the said C. whereof the said C. is convicted: And thereupon our said sheriff of (*the county where ca. sa. directed*) sent to our justices at a certain day now past, that the said C. hath no goods or chattels in his bailiwick, whereof he could cause to be made or levied the said expences and costs, or any part thereof: WHEREAS it is testified in our said court, that the said C. hath sufficient goods and chattels in your county, whereof the said expences and costs may be caused to be made and levied: And have there this writ. WITNESS Sir William De Grey, Knight, at Westminster, &c.

Form of test.  
fi. fa. in  
case.

*Indorse same as directed under common fi. fa.*

George the Third, &c. Whereas A. B. lately in our court, before our justices at Westminster, by the consideration of the said court, recovered against

Form of an  
debt.  
debt.



against *C. D.* late of, &c. as well a certain debt of forty pounds as twenty shillings, which in our said court were adjudged to the said *A.* for his damages, which he had sustained by occasion of the detaining that debt, whereof the said *C.* is convicted; and the said *A.* afterwards came into our said court, and by the statute in that case made and provided, chose to have delivered to him all the goods and chattels of the said *C.* except his oxen and the bealls of his plough; and also a moiety of all his lands and tenements in your bailiwick, to hold to him the goods and chattels aforesaid, as his own proper goods; and also to hold the said moiety of the said lands and tenements as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied: Therefore we command you, that all the said goods and chattels of the said *C.* except the oxen and beasts of his plough; and also a moiety of all his lands and tenements in your bailiwick, whereof the said *C.* on the day of

*(here insert the day judgment was given)*; on which day the said judgment was given, or at any time afterwards was seized, you cause to be delivered, by a reasonable price and extent, to hold the said goods and chattels as his own proper goods and chattels; and to hold the moiety of the said lands and tenements as his freehold to him and his assigns, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied; and in what manner you shall execute this writ, make appear to our justices at *Westminster*, on *(here insert the return of elegit)* under your seal and the seals of them by whose oath you shall make the said extent and appraisement; and have there this writ.

writ. Witness Sir William De Grey, Knight,  
at Westminster, &c.

*Indorse same as directed on fi. fa.*

If any of these writs are not executed before Observa-  
the return, you make out a continuance there- tions.  
on; or if defendant takes refuge in a liberty, a  
*non omittas*. You pay the prothonotary sign-  
ing *test. ca. fa.* and *fi. fa.* 8 d. each, sealing  
1 s. 2 d. each.

In debt on bond, where judgment goes by Practical re-  
default, plaintiff may levy the whole penalty, marks.  
and defendant must seek his remedy in equity.

Execution taken out again a man's goods in  
his lifetime, may be executed after his death  
without *sci. fa.* Mod. Caf. 225.

If upon an *elegit*, part of the debt is levied  
on the goods, and a *nihil* returned as to the  
lands, plaintiff may sue out a *ca. fa.* and take  
the body of defendant for the remainder of the  
debt.

Plaintiff on an *elegit*, releasing one acre ex-  
tended thereon, releases the whole. Andr. 226.

Where judgment against two, and one dies  
before execution, *sci. fa.* must be brought against  
both the survivor and heir, and tertenants of the  
deceased. Cartberr 107.

Where judgment against two, the death of  
one, after taken by *ca. fa.* doth not discharge  
the other. Crook. 851.

Any creditor, at whose suit the prisoner stands  
charged in execution, may retake him upon  
escape by a new *ca. fa.* Stat. 8 & 9 W. 3.

*Fi. fa.* abates not by death of plaintiff. Mod.  
Caf. 225.

A ground landlord is not intitled to a year's  
rent on execution against an under lessee, the  
statute extending only to the immediate land-  
lord. Stat. 8 Ann.

## The Modern Practice of the

Defendant may be taken in execution by a wrong name, if he has omitted pleading a misnomer. Same in case of bond given in a wrong name. *MSS. Cases, C. B.*

## S H E R I F F

Is an officer annually appointed by the King in council, except in *London* and *Middlesex*, where they are chosen on *Midsummer day*, by the livery of *London*.

By the common law, the sheriff is a subordinate officer to the courts at *Westminster*, as the constable is to a justice of peace. 2 *Ld. Raym.* 1195.

By stat. 3 *Geo. 2.* The sheriff may appoint an under-sheriff or deputy for executing his office.

Sheriffs must yearly make a deputy in the courts of Chancery, *K. B.* Common Pleas, and Exchequer, of record, before they return any writs, whose duty is to receive all writs and warrants, under forfeiture, for neglect of so doing, 40 l. and treble damages. *Stat. 23 Hen. 6. Rule, Hilary, 14 & 15 Car. 2. C. B.*

All sheriffs, at the expiration of their office, must turn over their prisoners, and all such writs and processes as remain in their custody unexecuted, to the new sheriff, by indenture and schedule; and on neglect thereof, are liable to make satisfaction by damages and costs to the party aggrieved. *Stat. 20 Geo. 2.*

Sheriff shall not be called upon to make a return of any writ, &c. unless required so to do within six months after the expiration of his office: Same *Stat.*

All writs executed by a former sheriff, tho' included in the indenture and schedule to the new



new sheriff, must be returned by, or in the name of the old sheriff; and the return subscribed by the new sheriff.

The old sheriff's power remains till new sheriff is sworn in. 2 Lill. Abr. 633.

If he hath made a return of *cepi corpus et parat' habeo*, and afterwards removed, and new sheriff made, on non-appearance of prisoner, process shall go to old sheriff by *distringas*. In what cases process begun by old sheriff, shall be ended by him. Bulst. 82.

The distinction is,

If sheriff return *cepi corpus*, and have not the body ready, he shall be amerced, and a *distringas* shall issue to the coroner: If old sheriff makes same return, and before day of return is removed, and another sworn in, the *distringas*, in that case, shall issue to new sheriff, if it appear on record he has taken the body.

On *feri facias*, goods seized by sheriff in his hands, to the value of the debt, who had paid part of debt, and goods not being sold, nor writ returned, he was discharged, and afterwards sold remainder of goods without any *venditioni exponas*. Court determined such sale good, for *feri facias* gave him authority so to do, without any other writ. Mod. 557.

If sheriff sells goods on a *feri facias*, and on a *venditioni exponas*, he returns, that he could not find buyers, tho' his office determines, he may still detain the goods in his hands; and plaintiff hath no remedy against old sheriff, but to have issues upon him. Latch. 117.

If money paid to the old sheriff, and he is discharged before the return of writ, the party paying same, shall not be compelled to a second payment. Plaintiff must seek his remedy against former sheriff. Ander. 260.

If old sheriff return a proclamation on an *exigent*, after discharged from office, the outlawry is void, and party may be discharged. Dy. 41.

## The Modern Practice of the

Court will not grant an attachment against sheriff for contempt, after out of office, on this principle, that he is then no officer, and cannot be fined, without which they will not imprison. *2 Brownl. 144.*

Sheriff out of his office, cannot be fined, but court may send for him to answer misdemeanor committed when in office, and a *distringas super vicecomiti* may issue against him for such misdemeanor. *2 Saund. 88.*

Attachment lays against sheriff for a frivolous return of a *habeas corpus*, and court will in that case direct an *alias* to issue, under a penalty. *Style Rep. 422.*

Attachment may be obtained against sheriff for refusing to bring monies into court levied on execution, when directed so to do; for sheriff is an officer of the court. *Lit. Abr. 160.*

The same against sheriff for returning *test. fieri facias*, that he had taken goods, but that they remained in his hands for want of buyers, whereon writ issued to put them to sale, of which he made no return, nor did he satisfy plaintiff. *J. Raym. 171.*

Determina-  
tion of his  
office.

The office of sheriff may be determined by the King, at his pleasure, tho' he cannot abridge his power during his continuance in office. *4 Bac. Abr. 431.*

Sheriff being made a baron, or chose a member of parliament, doth not vacate his office, *Cro. Eliz. 2 pl. 3.*

By the common law, patents of sheriffs, like all others, determine by the demise of the King. *Dalt. Sber. 17.* But by *1 Ann.* their power remains in force for six months next after such demise, unless made void by his successor. *4 Bac. Abr. 435.*

Pending demise, and before patent renewed, if a prisoner escape, an action will lie against sheriff for such escape. *7 Co. 30.*

If

If sheriff die before his year is expired, his under-sheriff is to execute the office till another appointed; and he is answerable to the King, and all others, during such interval. *Stat. 3 Geo. 2.*

If sheriff takes a bribe of any under-sheriff, bailiff, goaler, &c. for his place, he may be indicted, fined, or imprisoned. *2 Inst. 566.* Where action lies against sheriff.

Or if he embezzles an *exigent* delivered to him. *12 Mod. 494.*

The above restriction extends to *London and Middlesex*, by *Stat. 5 Ann.*

An action on the case will lie against sheriff for entering a corporation, which had *retorna brevium*. *Roll. Rep. 119.*

If sheriff refuses sufficient bail against *Stat. 23 Hen. 6.* an action lies against him for the penalty of 40 l. *Roll. Abr. 537.*

An action on the case lies against sheriff for levying money on *fieri facias*, and not bringing same into court at return of writ.

If sheriff is often seen in a person's custody against whom he hath a writ, and return same *non est inventus*, an action lies against him. *Cro. Jac. 532.*

So if he hath a warrant to attach the goods of another, and can, but does it not, an action lies against him. *3 Bulst. 212.*

Or if you shew him defendant, and he does not arrest him. *Cro. Elix. 873.*

On a writ *de coronatore eligend'*. if sheriff refuses to return him coroner, who is chosen by the major part, an action lies against him. *2 Vent. 26.*

An action will lie against sheriff for not returning good issues upon a *distringas*. *Lord C. J. Holt. 12 Mod. 494.*

If sheriff refuses a writ, an action will lie against him, because the law hath charged him



with that employment for the public good. 12  
*Mod.* 485.

Where  
 amerced:

Sheriff may be amerced for the default of his under-sheriff, or bailiffs in the Exchequer; but shall not be indicted or imprisoned for same. *Latch.* 181. *Brownl.* 36.

If sheriff is amerced by the court, same may be respited, if not estreated into the Exchequer, by motion and consent of party aggrieved. *Lit. Abr.* 83.

On a *capias ad respond* if sheriff return a *cepi corpus*, and party arrested doth not appear, he may be amerced; yet if party appears within one week after return of writ, amerciament may be taken off. *Lit. Abr.* 83.

If debt levied on *feri facias*, and paid to plaintiff, and writ not returned, levy and sale is good; but sheriff may be amerced for *non-return* of writ. *Comp. Sher.* 417.

In the following cases, the high-sheriff must execute the office in person, and not by under-sheriff, *viz.*

Writ of *partition*, writ of *redisseisin*, writ of *waste*, *justicies*, and in all cases where the words of writ are, That sheriff shall go in person as in an *accedas ad curiam*, &c. *Freeman* 445.

*Note*,—If sheriff hath a court by prescription, and used to execute process therein, no action lays against him, because therein he acted as judge.

## UNDER-SHERIFF

Is an officer the law takes notice of, having been in use from before the conquest. *Brownl.* 64.

He

He ought not to have any estate or interest in His necessary the office of sheriff. *Latch.* 187. ry qualifications, power, and duty.

If an under-sheriff makes deputies, he is liable to an attachment. *MSS. Cases.*

For the sheriff being a ministerial officer, may make a deputy; but the under-sheriff, being a judicial officer, cannot.

All returns made by under-sheriff, must be made in the name of the high-sheriff, who only is answerable for all acts of his servants. *Dak. Sher.* 3. *Hob.* 13. *12 Mod.* 468.

The high-sheriff need not make an under-sheriff, he may direct his precepts to his bailiffs. *Wood's Inst.* 74.

If an under-sheriff appointed, the necessary consequence is, that he hath power to make bailiffs and precepts without acquainting high-sheriff thereof; this arises from his deputation. *12 Mod.* 468.

No under-sheriff can intermeddle with his office till he hath taken the oaths. *Stat.* 27 *Eliz.*

He shall not abide in his office above one year. *Stat.* 23 *Hen.* 6.

No under-sheriff, sheriff's clerk, receiver, nor bailiff, shall act as an attorney in any of the King's courts, during the time that he is in office. *Stat.* 1 *Hen.* 5.

Assignment of prisoner by an under-sheriff, equally valid as by high-sheriff. *MSS. Cases.*

Under-sheriff, by virtue of his office, is included in the several statutes relating to a sheriff. *10 Mod.* 289.

High-sheriff cannot depute an under-sheriff with any restriction in the execution of his office. *12 Mod.* 467.

Under-sheriff must have a deputy in all the courts at *Westminster*, to execute their commands. *2 Lil. Abr.* 627.

## The Modern Practice of the

The office of under-sheriff, seal-keeper, county clerk, shire clerk, goaler, bailiff, or any other office appertaining to the sheriff, shall not be bought or let to farm, under forfeiture of 500 l. half to the King, the other to the party suing; action to be brought within two years. *Stat. 3 Geo.*

An action may be brought against under-sheriff in the Exchequer for false imprisonment, or for detaining prisoner after a release made. *Roll. Abr. 539.*

If bailiff on *feri facias* levies a wrong person's goods, high-sheriff may bring action of covenant against his under-sheriff. *2 Keb. Rep. 352.*

Warrant on *feri fac.* directed to under-sheriff; if he levies and conceals writ, action on the case lies against him. *MSS. Cases, C. B.*

## B A I L I F F S

Their qualification,  
duty, &c.

Are appointed by the sheriff; they are to execute all writs directed to the sheriff, by virtue of his precept or warrant, within their district. *Barn. Abr. 232.*

Take no oaths to the King, or of office. *Freem. 419.*

Bailiffs are punishable in those courts where writ issues by attachment, for force, violence, and terror; in making an arrest, or breaking open doors where by law they ought not; for treating persons arrested inhumanly, or keeping them in custody till they consent to pay money for their deliverance; for making an arrest without authority, &c. *Lil. Abr. 266.*

Bailiff arresting a person, shall not carry him to a public house, or to his own house, or to the house of any tenant or relation, without his

con-



consent, nor charge him for victuals or liquor, but what he calls for, nor take for the arrest a greater sum than is by law allowed, or for indulgence, till bailed or settled, nor for keeping the person arrested out of goal, nor shall carry him to goal within twenty-four hours from the arrest, unless the person arrested refuse to go to any house of safety within three miles of the place arrested, and within the jurisdiction of the sheriff, and then officer may carry him to goal. *Stat. 32 Geo. 2.*

Copies of this statute to be delivered to bailiffs by under-sheriff, and shewn by them to prisoners as soon as they come into custody. Same *Stat.*

The sheriff not bound to execute attachments in person, it may be done by his bailiff. *Lord Raym. 21.*

Bailiff not prejudiced by non or mis-return of sheriff, so he executes his part of duty. *Leon. 144.*

On escape from bailiff, action on the case should be brought against sheriff. *Vin. Abr. 573.*

No bailiff of any court whatever, or serjeant at mace acting as such, shall be bail in any action in this court. *Rule, Mich. 6 Geo. 2. C. B.*

Action lies against bailiff for refusing to convey his prisoner to under-sheriff in order to put in bail, but not for his refusal to take bail. *2 Mod. 32.*

### Arrest.

A proper arrest held to be, that bailiff must acquaint the party at whose suit he arrests him, and shew the warrant, if required so to do. *Cro. Jac. 486.*

Sheriff

Sheriff cannot dispute the authority of the court, he must execute writ though erroneous. *Vent.* 273.

If after arrest person flies, or draws weapons, bailiff may justify beating him, but not before arrest. *Dalt.* 111.

Bailiff sending another person with his warrant, not named therein, to make an arrest, and the person executes same, such arrest illegal. 12 *Mod.* 73.

Writ executed on the Lord's day illegal, and person executing same, must answer in damages, as if he had no warrant. *Stat.* 29 *Car.* 2. And if the party arrested is detained till next day, so as to fix him for the first arrest, he hath his action of false imprisonment, and for the detainer, may on motion obtain attachment against officer. 6 *Mod.* 96.

But a person on an escape warrant may be taken on a *Sunday*. *Stat.* 5 *Ann.*

An arrest may be in the night as well as day. 5 *Co.* 92.

The law allows an arrest to be made on the day writ is returnable, so it is done before the rising of the court out of which it issues; but not after. 6 *Mod.* 130.

No arrest can be made in the King's palace where he resides, or in any other of his palaces, without an order from the Board of Green Cloth. *Lord Raym.* 978.

The verge of the court comprehends *Whitehall* and the *Park*, the foil and ancient palace at *Westminster*. It extends to all the streets from *Charing-Cross* to the *Sanctuary Gate* at *Westminster*, and the houses on both sides of the streets, from the *Cross* to *Westminster Hall*, between the *Thames* on the East, and the *Park-wall* on the West. *Stat.* 28 *Hen.* 8.

The jurisdiction of the *Marshalsea* court is not to extend above twelve miles from the King's actual residence. *Stat. 13 Rich. 2.*

Arrests ought not to be of persons going to, or coming from church in the church-yard, nor in time of divine service in church, unless at the King's suit. *2 Bulst. 72.*

Persons attending the courts at *Westminster* on any business relating thereto, or on judge or officer of the court, are privileged from arrests both going and coming, and during such attendance. *2 Lil. Abr. 115. 2 Mod. 181.*

Court will not countenance arrests in the *Temple* in term time. *12 Mod. 155.*

The liberty of the rolls is no privileged place, but as a court of justice is held there, the party is protected in going and returning on business. *Freem. 47.*

The privilege of the cinque ports extends only to its inhabitants, and where the cause arises within their jurisdiction. *Godb. 102.*

The privilege of the universities is not allowed against the privilege of the courts at *Westminster*. *Hardw. 188.*

*White Friars, Savoy, Salisbury Court, Ram Alley, Mitre Court, Fuller's Rents, Baldwin's Gardens, Montague Close, the Minorities, Mint Clink, or Deadman's Place, the Hamlet of Wapping, or others within the bills of mortality,* have now no privilege. *Stat. 11 Geo. 2.*

Officer, at his peril, is to take notice that he arrests the proper person. *Hard. 323.*

Where there are two sheriffs, the act of one is the act of both. *Salk. 152.*

Sheriff may arrest one of the King's servants, but if he shews his privilege, officer must discharge him, or he is punishable. *Keb. Rep. 842.*

Ambassador's servants, if privileged, must have their names in the sheriff's office; they need



need not lie in the house of their masters, to constitute them servants, but they must prove, before they can be discharged from an arrest, a real and *bona fide* service. *Stat. 7 Ann.*

If an officer arrest a person before he hath a warrant, though he afterwards procure one, such first arrest is illegal. *Dalt Sher. 111.*

An arrest without shewing warrant till demanded, is legal. *Cro Jac. 486.*

An action on the case lies against any person disturbing an officer in the execution of his duty, and may be brought either by officer or plaintiff; but it will not lie on an execution where defendant himself opposes levy in his own house. *5 Co. 91.*

Bail on scire  
facias.

If bail are freeholders of the same county, sheriff must give them notice in time; if strangers, it is not necessary, he may return two *nibils* without any warning. *Comp. Sher. 111.*

Bail-bond.

Bail-bond may be given to bailiff or sheriff only, but must be made to the sheriff himself by the name of his office, and shall be only for appearance at the return of writ. *23 Hen. 6.*

Any error in bond, as to time of appearance, renders same void; and obligation taken by sheriff after return of writ, is void by the *Stat. Raym. 349.*

Sheriff must obey process out of the Duchy court. *Cro. Eliz. 646.*

As sufficiency of bail is not traversable, tho' statute is in the plural number, one pledge is sufficient, and sheriff is judge of the sufficiency. *Fortes. Rep. 369. Mod. 118.*

Bail-bond void, if against statute in any point. *Cro. Jac. 286.*

Sheriff may take bail after writ issues, and before it comes into his office, if defendant voluntarily offers same. *Keb. 554.*

Though

Though *superfideas* issues to action before the day of appearance, yet defendant must appear to discharge bond. *MSS. Cases, C. B.*

Sheriff, for a false return to writ, is amerceable by the court, but no action lies against him by the plaintiff. If he refuses to take reasonable bail, an action on the case lies against him, but if he absolutely refuses bail, an action of false imprisonment may be brought against him by the party. *Mod. 244. Sid. 23.*

If sheriff dies before assignment of bail-bond, plaintiff must, notwithstanding, sue in his name, as his executor cannot assign bond. *10 Mod. 288.*

Sheriff compellable to assign bail-bond, and must assign same after his office expires. *Stat. 4 Ann. Fortesf. 364.*

Sheriff may take bond for double the sum sworn to, and indorsed on writ. *MSS. Cases.*

There must be two witnesses to assignment of bail-bond. *Fortesf. 371.*

Sheriff may take bail on an attachment *pro pace*, but cannot take bail on an attachment for a *contempt*. *Strange 479. Lord Raym. 723.*

Return may be made on the *essoign* day, but good, if made the *quarto die post*. *2 Bulst.* Returning writs.

On *feri facias*, where the whole money not levied, first writ must be returned by sheriff, before a second can issue. *Salk. 318.*

All returns made by under-sheriff, must be made in the name of the high-sheriff; they must be true, and not contrary to any former return, and made according to ancient course and precedents. *3 Bulst. 78. Cro. Jac. 323.*

Sheriff's return cannot be falsified by affidavit, nor is his return of a *rescue* traversable. *Com. 255, 295.*

Under-sheriff compellable to return writ. *12 Mod. 454.*

X

Where

Where two sheriffs, writ must be returned in both their names. *Bro. Abr.* 22.

Return of *rescue* must shew the year and day on which made. *Fitz. Abr.* 45.

*Scire facias de bonis propriis*, can only be awarded on the return of a *devastavit* by sheriff. *Cro. Eliz.* 530.

*Devastavit* may be returned on the first *fieri fac.* at peril of sheriff. *Salk.* 310.

In returns of writs, matters of form are amendable, but not matters of fact. 2 *Bulst.* 259.

*Habeas corpus.*

The return thereof must be made by sheriff, ingrossed on parchment annexed to writ, if same be good to common intent, sufficient.

*Habeas* at the suit of the King, sheriff must return at his peril. *Keb. Rep.* 272.

If to remove a prisoner, sheriff must return writ, and court will allow his charges, or remand prisoner. The officer has a remedy by action for his charges in bringing up prisoner. 2 *Strange* 814.

*Inquiry.*

If sheriff returns inquisition different from the verdict given by jury, court will set same aside.

If sheriff on executing inquiry, refuses to swear and examine any of the witnesses offered on either side, and yet doth return writ executed, court will grant a new writ to the party grieved.

Inquiry directed to sheriff, cannot be executed by bailiff of the liberty. *Hob.* 83.

Inquiry may be executed before a deputy, so he hath a deputation under the seal of the sheriff's office. 2 *Barnard* 188.

Parties cannot except against a juror upon executing a writ of inquiry. *Inst. Cler.* 558.

*Execution.*

Sheriff cannot break open a house, open a window, or latch of a door, to take the person, or levy the goods on a writ of execution, except at the suit of the King, or on a *cap. utlegatum*, *writ of possession*, or for an *escape*, and even then a demand



a demand and refusal must precede such step. *Cro. Eliz.* 908. *Foster* 319. *Bac. Abr.* 454.

But the house of another person will not protect a debtor or his goods; sheriff after request made to open same, and refusal, may break it open. 19 *Vin. Abr.* 432. 4 *Bac. Abr.* 455.

A barn not adjoining to the dwelling-house may be broke open without request. *Vin. Abr.* 432.

Though sheriff cannot break open a house on *ea. fa. fieri fac. &c.* yet if door is open, and he enters, he may justify breaking open any apartments therein; and for neglect of executing his warrant, an action on the case lies against him by the plaintiff in the suit. 4 *Bac. Abr.* 456.

Goods pawned shall not be taken in execution while under pledge. *Kitch.* 226.

By statute of frauds and perjuries, no writ of execution affects goods, but from the time of its delivery to the sheriff; and if defendant dies after the *teste, fieri facias* may be executed on the goods in the hands of the executor. 2 Lord *Raym.* 808.

Payment to the party, on execution, will not discharge sheriff's power by the writ, unless acquittance pleaded as an estoppel thereto, the direction of writ being to bring the money into court; nor is sheriff fairly discharged till he hath so done. 12 *Mod.* 230.

On *feri fac.* where sheriff seizes goods, and makes no return, plaintiff cannot issue two *feri fac.* he must follow first execution; as the property of the goods are altered by such levy, it is proper for him to get return to writ; a new execution would be erroneous, because defendant is not to be doubly charged by judgment. The judgment from that time is no lien on defendant for what has been levied; and if second *feri fac.* taken out by plaintiff, defendant may

bring his action against him for so doing. *Godb.* 147, 276.

Whenever sheriff returns seizure of goods, or a rescue, a *scire fac.* lies against him. If he returns a *cap.* to part, a *scire fac.* must be brought for the part, and a *feri fac.* for the residue. If sheriff levies money on a *feri fac.* though he makes no return to writ, action of debt, accompt, or *assumpsit*, lies against him and his executors, because it is a debt in him by levying the money, and defendant by such levy, can on *scire fac.* brought to have execution, plead such levy in bar, or on second *feri fac.* be relieved by an *audita querela.* *Cro. Jac.* 419. *Cro. Car.* 539. *Rel. Abr.* 598, 921. *Mod.* 819.

The *alegit* lies to seize goods and chattels, as well as land. Lands on an *elegit* may be sold to plaintiff for the price set on them by jury; if defendant tenders money to sheriff before delivery, or to court before writ delivered to sheriff, such goods are saved; if afterwards, he is intitled to his *audita querela*; but if no tender made of the money by defendant, the property of the goods are altered by delivery of the sheriff, and plaintiff may dispose of them under the judgment. *Moor* 873.

On *feri fac.* sheriff cannot deliver defendant's goods to plaintiff in satisfaction of his debt, but must return execution into court. *Cro. Eliz.* 504.

If defendant tenders debt, it is wrong for sheriff to sell goods. *Keble. Rep.* 655.

In ejectment, if sheriff delivers more land than mentioned in writ of possession, this does not make writ erroneous, but action on the case lies against sheriff for so doing. *Comp. Sher.* 263.

If he does not execute in the right places, trespass lies against him. *Yelv.* 228.

If

If recoverer is put in complete possession by *habere fac. posses.* and same returned, and defendant ousts him again, he hath no remedy but by new action. 2 *Brownl.* 216.

Possession is given by sheriff thus; Land by a twig, clod, &c. House by the key, &c. Rent by corn or grass growing on the land. 6 *Co.* 52.

On an *elegit*, sheriff must return and set out the moiety to be extended distinctly, unless where tenants in common, and then he must return the special matter. *Brownl.* 38.

The moiety must be delivered by metes and bounds. *Hut.* 19.

If sheriff deliver more than a moiety, execution is void. 2 *Salk.* 563.

On *elegit*, if error be brought, and judgment reversed, the goods in *specie* shall be restored, and not the value; on a *feri fac.* the value: The difference being, that on *feri fac.* the sheriff must sell to any buyer, but on *elegit*, he is only to deliver it to plaintiff. *Cro. Eliz.* 278, 584.

*Elegit* will not lie against glebe belonging to the parsonage or vicarage, nor to the churchyard, for these are each *solum Deo consecratum*. *Jenkins* 207.

No action lies against sheriff for a rescue on *Rescue*. mesne process in bringing defendant to goal, but otherwise if he breaks goal. 2 *Bulst.* 198.

Action of debt lies against sheriff upon a *cap.* returned, *quod cepit corpus*, and prisoner rescued. 2 *Rol. Rep.* 58.

No rescue on a *feri fac.* for goods, the party must bring an action on the case. *Cro. Car.* 315.

Rescuers punishable by fine and attachment. 2 *Keb. Rep.* 340.



When you move for attachment against rescuers, *rescue* must be returned on writ, which is the ground for motion, and not affidavit. 2 Salk. 586.

### Escape.

Sheriff suffering prisoner in execution voluntarily to escape, plaintiff may have action of debt against him, or action on the case; but if not voluntarily, he may make fresh pursuit, though in another county, after him; and if taken, he shall be deemed still in execution. 3 Co. 52.

It is no escape, if prisoner retaken before action for escape brought.

A man under execution, going at large in or out of the county, is deemed an escape, for he ought to be kept *arcta custodia*. Hob. 273.

### False imprisonment.

An arrest after writ returnable.

An illegal warrant and arrest thereon.

If bailiff asks a person if his name is *A. B.* and he says Yes, yet if it is not *A. B.* false imprisonment lies against sheriff. *Mod.* 457.

Action of false imprisonment will not lie against sheriff on arrest, on an erroneous judgment; execution is good till judgment reversed by error. 3 *Mod.* 325.

### Sheriff's fees.

Sheriffs formerly being officers of justice, could take no fees or reward for doing their duty, but what they received from the King, and by statute 9 *Eliz.* 21. *Henry* 7, &c. their fees were limited.

Sheriff is intitled for serving extent or execution on the body, land, or goods, to only 12d. for every 20s. levied, where sum doth not exceed 100l. and 6d. for every 20s. above, under forfeiture to the party aggrieved of treble damages, and 40l. penalty; half to the King, and the other half to the party suing for same. *Stat.* 29 *Eliz.* cap. 4.

This statute doth not extend to any fees for executions in cities or towns corporate, unless judgment

judgment given within their franchise. *Cro. Car.* 287.

However, sheriff of cities and towns corporate, now charge, and are allowed the same fees, paying their bailiffs out of their poundage-money. *Lil. Abr.* 598.

The sheriff, by an equitable construction of statute 23 *Hen.* 6. is intitled to take 4d. for every warrant issued on a writ. *Winch* 21.

Extent out of the Exchequer at the King's suit, if sheriff dies before sale made, and a *venditioni exponas* issues to his successor; the Barons of the Exchequer, or any one of them, are to settle how the poundage is to be divided between the preceding and succeeding sheriff. *Stat.* 3 *Geo.* 2.

Fees to be paid by party who employs officer: *Keb. Rep.* 623.

No sheriff, under-sheriff, bailiff, or others employed in levying any debt due to the crown, by process from the Exchequer, shall take any fee under pretence of such levy, except 4d. for an acquittance, which such officer is to give to the person on whom such debt, &c. is levied, and the bailiff receiving such debt, shall account to sheriff. Sheriff levying such debt, and not accounting to the crown, shall forfeit treble damages, and double the sum to the party aggrieved, to be recovered in a summary way in his Majesty's Exchequer; and if he demands any money of a person from whom any debt is payable to the crown, under pretence of executing process, or for fees, or for forbearance, every such offender shall be adjudged guilty of extortion, and being convicted, shall forfeit treble damages and costs to the party aggrieved, and double the sum extorted to be brought in his Majesty's Exchequer, in a summary way, provided

vided same is prosecuted within two years after offence committed. *Stat. 3 Geo.*

This act does not deprive sheriff of his poudage, &c. or any reward that may be given him by warrant from treasury, Chancellor of the Exchequer, or Barons, for any extraordinary service to the crown. *Ibid.*

\* Sheriff's fees for levies at the suit of the crown settled by *Stat. 32 Geo. 2.*

There are no fees due to sheriff on executing an *habere facias possessionem* by the statute 29 *Elix.* as it does not extend to real executions, but only to personal ones; but sheriff is intitled for executing this writ to 12d. for every 20s. of the yearly value of any lands, where the whole does not exceed 100l. and 6d. for every 20s. above that value. By *stat. 3 Geo. & 8 Geo.*

Sheriff is intitled to his fee on *ca. sa.* for what is due to plaintiff. *Stat. 3 Geo.*

But on *elegit* and *fieri facias*, for the sum levied, and no more. *Stat. 3 Geo.*

Goaler's  
fees.

Fees for lodging, diet, &c. of a person in goal, to be settled by justices at quarter-sessions. *32 Geo. 2.*

Goaler's fees to be settled by Chief Justice of the court and Mayor; two or three Aldermen, without the Mayor, in *London*; and the Lord Chief Justice, or Lord Chief Baron, with three Justices, in *Middlesex, Surry, &c.* *Ibid.*

If goalers take any greater fees than allowed, to forfeit 50l. and treble costs. *Ibid.*

Warden of the *Fleet*, and warden of the palace at *Westminster*, may take bond of prisoner for diet and fees of office due. *Healy 176.*

Sheriff may take a single bill for his fees, but not with a penalty. *10 Mod. 86.*

Sheriff may bring action for his fees. *Comb. 220.*

Action



Action of debt lies upon statute 29 *Eliz.* for sheriff's fees of execution. *Roll. Rep.* 404.

Giving monry to a bailiff to arrest a man, is against law. *Roll. Rep.* 313.

No fee due to sheriff for executing a *cap. ntle-gatum*, nor for warrant, or return thereof. *Lit. Rep.* 65. *Brown* 283.

Bailiff taking fee to spare a person from appearing at assizes, sessions, &c. is guilty of extortion. *Compl. Sher.* 483. Extortion in bailiffs, how punishable.

Bailiff taking money to forbear arrest, &c. is extortion, and shall forfeit 10l. for every offence. 23 *Hen. 6. cap.* 10.

Punishment of bailiff for extortion is by indictment, information, imprisonment, or commitment.

## ENTRIES ON ROLL.

AS YET of (*the term issue is of*) WITNESS, Form of entering proceedings on roll, on ver-  
dict.  
Sir WILLIAM DE GREY, Knight.

LONDON, to wit, } *A. B.* puts in his  
(*or where venue laid*) } place *C. B.* his at-  
torney, against *C. D.* late of, &c. in a plea of Plaintiff's  
warrant of  
attorney.  
trespass on the case, (*or as the action may be.*)  
*If any description of plaintiff or defendant in declaration, it must be inserted).*

LONDON, to wit, *C. D.* late of, &c. puts Defendant's  
warrant of  
attorney.  
in his place *R. C.* his attorney, at the suit of the  
said *A. B.* of the plea aforesaid.

LONDON, to wit, } *C. D.* late of, &c. Issue.  
(*or where venue laid*) } was attached to an-  
swer *A. B.* of a plea of trespass on the case;  
and whereupon the said *A. B.* by *C. B.* his at-  
torney complains, That whereas, &c. (*here  
insert*)

**The Modern Practice of the**  
*insert issue to the end of plaintiff's similiter and  
 award of venire.)*

Note,—*There are no continuances in this court  
 when cause tried same term issue joined. If not  
 tried same term, then venire is continued by vice  
 comes non misit breve, only after which conti-  
 nuance you go on as above: At which day, &c.*

**Habeas cor-  
 pora,**

At which day (*the return of venire*) the jury between the parties aforesaid, in the plea aforesaid, was respited thereupon between them here, until (*the return of habeas corpora*) then next following, Sir William De Grey, Knight, the King's Chief Justice of the bench, here assigned by virtue of the statute in that case made and provided, shall first come on (*the day of trial; if in Middlesex, at Westminster Hall, in the great hall of pleas there in the county of Middlesex; if in London, at Guildhall of the city of London; if at the assizes, at the place where assizes held, and before the justices of assize, with their description*) and now here at this day (*the return of habeas corpora*) the said *A. B.* comes by his attorney aforesaid: And the Chief Justice (*if in London or Middlesex, or Justices of assize, if tried in the country*) before whom, &c. sent here their record in these words:

**Postea.**

**AFTERWARDS** (*here insert postea verbatim, according to the nature of the case*).

**Judgment.**

**THEREFORE** it is considered, That the said *A. B.* recover against the said *C. D.* his said damages by the said jury in form aforesaid assessed: And also (*here insert increase costs taxed by prothonotary*) for his said costs and charges by the court of our Lord the King, now here adjudged, of increase to the said *A. B.* with his assent.

**Mercy.**

And the said *C.* in mercy, &c.

Write

Write in margin, judgment, signed day  
of 1772.

Instead of *in mercy*, say, *be taken*, in trespass Taken.  
and ejectment; and in the margin, instead of  
*mercy*, write *taken*.

## ENTRY of Interlocutory Judgment.

*As before to end of declaration*; then in a new On demur-  
line add demurrer to the end; then in another rer.

line add joinder to the end thereof; then continuance by *curia advisare vult*, thus: AND because the court of our said Lord the King, of the bench, now here, is not yet advised about giving judgment of and concerning the premises, a day is given to the said parties to come before our Justices at *Westminster*, on next after

to hear judgment of and upon the same premises, for that the court of our said Lord the King, of the bench, now here, is not yet advised thereof: AT which day, before our Justices at *Westminster*, came the said parties by their attornies aforesaid, upon which all and singular the premises being seen, and by the court of our said Lord the King, of the bench, now here, fully understood and considered; and mature deliteration being had thereupon, *it appears* to the court of our said Lord the King, of the bench, now here, that the said declaration, and the matter therein contained, are sufficient in law for him the said *A. B.* to maintain his said action against the said *C. D.* wherefore the said *A. B.* ought to recover his damages against the said *C. D.* by occasion of the premises aforesaid: But because it is unknown to the court of our said Lord the King, of the bench, now here, what damages the said *A. B.* hath sustained by occasion of the premises, THEREFORE

Interlocutory judgment.



Award of  
Inquiry.

FORE it is commanded to the sheriff (*of county where venue laid*) that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages he the said *A. B.* hath sustained, as well by occasion of the premises, as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which, &c. to our Justices at *Westminster*, on

Return of  
writ.

next after  
under the seal, &c. and the seals, &c. together with the writ of our Lord the King, to him thereupon directed, &c. The same day is given to the said *A. B.* at the same place: At which day, before our Justices at *Westminster*, came the said *A. B.* by his attorney aforesaid, and the sheriff, to wit, (*here insert sheriff or sheriff's names, with addition or degrees*) sheriff of the county of \_\_\_\_\_ returned a certain inquisition taken before him at \_\_\_\_\_ in the county of \_\_\_\_\_ on the

Return of  
inquiry by  
sheriff.

day of \_\_\_\_\_  
in the twelfth year of the reign of our Sovereign Lord *George* the Third, now King, &c. by the oath of twelve good and lawful men of his bailiwick, by which it is found that the said *A. B.* has sustained damages by occasion of the premises, over and above his costs and charges by him about his suit in this behalf expended, to  
l. and for those costs and charges to 40s.:

Judgment  
signed day of  
August,  
1772.

THEREFORE it is considered, that the said *A. B.* recover against the said *C. D.* his damages aforesaid, by the said inquisition above found, and also l. for his said costs and charges by the court of our said Lord the King, of the bench, now here adjudged of increase, to the said *A. B.* by his assent, which damages in the whole amount to l. And the said *C. D.* in mercy, &c.

li

## Court of Common Pleas.

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If judgment be by *cognovit actionem*, after Note, title, warrants, and declaration in a new line, insert *cognovit verbatim* to the end, and then judgment.

It is necessary before you sue out *scire facias* Directions against bail, that the declaration in the original for entering action should be entered on roll of the term it recognizance was of, with title as in first precedent; then of bail on roll, when warrants of attorney; then recognizance, thus: on *scire fac.*

AND THEREFORE B. F. and I. G. (*the Entry of re-*  
*bail with their additions, as in bail-piece*) came cognizance.  
into the court of our Lord the King, of the bench, at *Westminster*, in their proper persons, and became pledges and manucaptors for the said defendant, and each of them became pledge and manucaptor for the said defendant, that if it should happen that the said defendant should be condemned in the plea aforesaid, then the said manucaptors granted, and each of them did grant, that as well the said debt, as all such damages as should be adjudged to the said plaintiff in that behalf, should be made of their and each of their lands and chattels, and to be levied to the use of the said plaintiff, if it should happen that the said defendant should not pay the said debt and damages to the said plaintiff, or render himself on that occasion to our prison of the *Fleet*.

If defendant makes no defence on *scire facias*, Note, you enter same on roll, with their returns, thus:

OUR Lord the King sent to the sheriffs of Entry of London his writ, closed in these words, to wit, *scire facias* GEORGE the Third, &c. (*writ verbatim to the where two end, with return; then second scire fac. to the nihil returned, and, with return*).

Y

THERE-

Judgment on  
scire fac.

**THEREFORE** it is considered, that the said *A. B.* have his execution against the said *E. F.* and *I. G.* of the debt and damages aforesaid, (or as the nature of the case is) according to the force, form, and effect of the said recognizance, &c.

Note.

If there are two *scire facias* returnable in different terms, the first must be entered on roll of term wherein it is returnable. The award of second is sufficient without setting it forth. If bail appear and plead, and you obtain judgment, you enter declaration, plea, &c. on *scire fac.* on roll as in a common case.

Note.

The above precedents will direct the practitioner in entering any judgment on roll, varying the different parts of the pleadings *mutatis mutandis*.

### DIRECTIONS for bringing in and docketing Rolls.

Attornies to sign their names in prothonotary's book for such rolls as they receive, and prothonotary not to deliver rolls but to known attornies, or clerks of their respective offices. Rule, *Easter 34 Car. 2.*

No attorney to carry rolls into the country. *Ibid.*

When to be brought in.

Rolls of *Easter Term* before the first day of *Trinity*; those of *Trinity* on or before the *Feast of St. Michael*; those of *Michaelmas Term* on or before the sixth of *January* next ensuing; and those of *Hilary* four days after the *Feast of Easter*. Rule, *Easter 34 Car. 2. C. B.*

Plea rolls of every term to be delivered to clerk of the effoigns three weeks after the end of following term, or in default, to pay him



12 d. for every plea roll brought in after. Rule, *Easter 5 Will. & Mary, C. B.*

Issues and judgments must be entered on rolls in a fair strong hand, with a margin of about an inch, and at top of each roll, a space of about nine inch breadth must be left to bind them up; and at bottom, a sufficient space left, that the writing be not rubbed out.

Manner of entering pleading on roll.

Warrants of attorney for plaintiff and defendant must be entered on every judgment roll, otherwise roll not to be filed.

Rolls are to be wrote on both sides, observing the above directions.

Says nothing in case.

*Middlesex, C. B. for J. K. } Roll.*  
*R. C. for J. W. }*

Manner of docketing judgment on prothonotary's common docket roll.

Forejudger.

*Middlesex, Same for A. B. } Roll.*  
*against C. D. an attorney. }*

## H A B E A S C O R P U S.

All writs of *habeas corpus* directed to any sheriff or officer of an inferior court, for removing the body of any prisoner in *London* or *Middlesex*, the *Marshalsea*, or any other court within five miles of *London*, may be made returnable immediately. These writs may be taken out in term or vacation, and it is the duty of the sheriff, or other officer, to make his return, and bring up the body as soon as possible, after receipt of the writ so directed to him. Rules, *Mich. 1654. Hil. 13 & 14 Car. 2. C. B.*

General directions for suing out and returning the writ of *habeas corpus*.

All writs of *habeas corpus* directed to any sheriff or officer of an inferior court, at above the distance of five miles from *London*, must be

Y 2 made

made returnable at a day certain in court. Rule, *Mich* 1654.

The *habeas corpus ad respondend.* or *ad satisfaciend.* granted to the warden of the Fleet, sheriff of a county, or keeper of any inferior prison, returnable at a day certain in court, are as good cause of detainer to such officer, as a *capias ad respondend.* directed to the sheriff. Rule, *Mich*. 1654, C. B.

In this case, the attorney applying for *habeas* must, on defendant's being brought into court to be charged with his client's debt, take care to have the term and number roll indorsed upon such writ of *habeas corpus*. *Ibid*.

*Habeas corpus* directed to the sheriffs of London or Middlesex, may be granted in term or vacation time returnable immediately, and it is the sheriff's duty to make his return same day writ is delivered. *Ibid*.

The same doctrine, if the writ is directed to warden of the fleet, marshal, or other gaoler, sheriff is to return same immediately, or at the day limited. *Ibid*.

If on the writ prisoner is returned, charged with process out of the K. B. or Exchequer, and with process out of this court, he may be committed with these causes. *Ibid*.

The same on *habeas cum causa* on process out of this court, though returnable at a future day. *Ibid*.

Bail on habeas corpus.

Bail on *habeas* from inferior court must be put in in eight days after writ allowed, or *procedendo* may be granted; and if taken in the absence of plaintiff's attorney, it must be taken *de bene esse*; and if on notice thereof, as in a common case, no exception be taken within twenty days, then on oath of the delivery of the notice, bail to be filed. Rule, *Mich*. 1654. *Hil*. 13 & 14 Car. 2. C. B.

If bail not filed within four days after the twenty days on certificate thereof, a *procedendo* may be granted. *Ibid*.

If

If the party is in custody, the judge's clerk is to deliver the bail to prothonotary to be filed, if assented to, in order that he may obtain his fees thereon; but prisoner cannot be discharged, if same is not assented to, or plaintiff over-ruled in open court. *Ibid.*

If defendant is arrested, and in custody of the sheriff, to avoid going to the county gaol, he may remove himself by *habeas* to the Fleet; but if not in custody by process out of this court, and would chuse to be removed to the Fleet, he must get some creditor to sue out a bailable action against him in this court, and the writ must be left with the sheriff before *habeas* brought, or he cannot be turned over; and so *vice versa* from this court to K. B.

If defendant is a prisoner in an inferior court, *habeas* will not discharge him out of such custody, till bail to *habeas* is put in above and justified, therefore it is most prudent to put in bail below, in order to give defendant his liberty, and then bring *habeas*.

No *habeas* can be brought to remove an action in an inferior court, unless for a debt above 5 l. If defendant is charged with several actions in an inferior court, some under 5 l. and some above, *habeas* will remove those above, but those under are not removed by such *habeas*, and the plaintiffs therein may proceed to judgment and execution, as if no such step had been taken. Stat. 12 Geo. 1.

GEORGE the Third, &c. To the sheriff of Middlesex, Greeting: We command you that you have the body of (A. B. *the person to be removed*) detained in our prison under your custody, as it is said, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said A. B. before Sir William de Grey, Knight, our Chief Justice



## The Modern Practice of the

Justice of the bench, at his chambers in *Serjeant's Inn, Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said Chief Justice shall then and there consider of him in this behalf, and have there this writ. Witness, *Sir William de Grey*, Knight, at *Westminster*, (*the teste of writ*) in the twelfth year of our reign.

Habeas to  
sheriff in the  
country,  
where defen-  
dant is in  
custody for  
want of bail,  
&c.

GEORGE the Third, To the sheriff of (*the county*) of (*where defendant is in custody*), greeting. We command you, that you have the body of *C. D.* (taken by you, and in our prison detained under your custody, as by your return lately sent into our court, of the bench, you have charged yourself) before our justices at *Westminster*, on (*some return day in term that you would have defendant brought up*) to answer to *A. B.* of a plea of trespass on the case, (*according to the nature of the action*) and also (*here insert ac etiam as in writ taken out by you against defendant*) and have, &c.

Note.

If sheriff or other officer returns any of these writs, *languidus in prisona*, or sick in prison, then make out following *habeas* to sheriff, &c.

Habeas  
where person  
sick in pri-  
son, as re-  
turned by  
sheriff, &c.

GEORGE the Third, &c. To the sheriff, (*where defendant in custody*), greeting. We command you, that you have the body of *A. B.* detained in your prison, under your custody, (although sick) as by your return sent into our court before our justices, manifestly appears to us, (*or if in a former sheriff's time, the languidus in prisona was made, then say*) as manifestly appears to our justices by the return of *E. F.* late sheriff of the county aforesaid, you have before our said justices at *Westminster*, (*the return of habeas*) to answer to *C. D.* (*as before*) and have, &c.

The

The first of these writs is a *habeas corpus cum causa*, and if you want to remove the body and cause from an inferior court, it must be directed to such court, with the proper style and title thereof; as see under head of directions to particular courts, at the end of the book.

The *habeas corpus* returnable immediately, is usually made returnable before the Chief Justice of the court, but bail may be taken before any judge of the same court.

These writs are ingrossed on a 5s. stamped piece of parchment, and you make *precipe* for office thus:

Middlesex, to wit, *Habeas corpus* for C. D. to do and receive. Precipe for habeas.

R. R.

Nov. 1772. }

*Returnable immediately.*

Carry *precipe* to prothonotary, who will sign writ; pay in term, 6s. 8d.; in vacation, 7s. 8d.; sealing, 7d.

Bail cannot be put in to *habeas* till same is returned, and if to remove any matter from an inferior court, the bail and proceedings after removal are *de novo*. Bail to *habeas* are liable to all actions brought from inferior court by return of same, if plaintiffs declare thereon within two terms.

Plaintiff in action removed by *habeas*, must declare against defendant in court where cause removed, before the end of second term after return of *habeas*, and defendant not bound to plead, if delivered afterwards; but if defendant removes cause, and puts in bail to writ, he cannot *non pros* plaintiff for want of declaration. Rule; *Hil. 14 & 15 Car. 2. C. B.*

On cause being removed, plaintiff therein to hasten bail, may take out a rule before any judge of court where cause removed, for a *procedendo*, unless good bail be put in within four days. How to compel a justification on habeas.

days next after service of rule. Pay judge's clerk for rule 2s.; serve copy immediately on defendant's attorney. If bail not put in within time directed by rule on affidavit of service of rule, and application to judge for that purpose, he will order a writ of *procedendo* to issue. If defendant puts in bail on being served with rule, he gives plaintiff notice of bail in same manner as on bail in a common case, only calling them bail on writ of *habeas* brought in this cause.

Note.

If this rule taken out in vacation, it must be a six-day rule for bail.

On bail being put in, plaintiff may except against bail, and give notice of exception, as in common action, and defendant must justify same in four days, on giving plaintiff notice thereof; but the usual practice is, to get a four-day rule from judge for better bail, on return of former rule, and serve defendant with same; pay for second rule as before. If this rule is given in vacation, defendant may justify before a judge, in order to comply with same; and if plaintiff does not like such justification, he may, on first day of ensuing term, take out another rule for justification; in which case, defendant may add and justify at same time, and give notice of his intention to plaintiff, as in common case.

Practical remarks.

On *habeas* for removing cause from *Marshalsea*, or other inferior court, if bail below become bail above, plaintiff cannot except against them, otherwise where cause comes out of the city courts. 1 *Salk* 97.

Special bail is required in all causes removed by *habeas* out of inferior courts, although under 10l. unless the defendant be an heir, executor, or administrator, or the action for words, or small trespasses, unless directed otherwise by court or judge.

In *Middlesex*, fees returning *habeas* are as follows. If one action, 4s. 8d. If more than one, sheriff takes 2s. 4d. each action; and if defendant



defendant is in *Newgate*, you pay 2s. 4d. for goaler's warrant to deliver defendant to bailiff. Warrant to bailiff to conduct a prisoner before a judge or court, 2s. 4d.

You pay allowing *habeas* at *Palace Court*, 5s.

The *habeas ad testificandum*, may be brought to remove a person in execution to be a witness, if the warden is indemnified against an escape. *Barnes 4to Edit. 223.*

The *habeas ad satisfaciend' et recipiend'*, may be made returnable immediately notwithstanding. Rule, *Mich. 1654, & 4 & 5 Will. & Mary.*

If there are more judgment than one against a person intended to be brought up to be charged in execution, each judgment must have a *habeas*. *Barnes 4to Edit. 223.*

On *habeas* brought, plaintiff in the suit is not limited to any time to serve defendant with rule for bail. *Barnes 4to Edit. 90.*

*Habeas* may be brought to remove a person out of private custody, and court will use their discretion as to directions thereon. *MSS. Cas. C. B.*

When *habeas* returned, bailiff brings defendant to judge's chambers, who will commit him to the prison you intend by *habeas* to turn him over to. Pay bailiff for bringing him to judge's chambers, 10s.; judge's clerk for commitment, 8s. 6d.; tipstaff carrying over defendant, 10s. 6d.

How to commit a person on return of *habeas*.

All persons brought by *habeas* into court, or before a judge, in order to be committed to custody of warden, *habeas*, with return thereof, must be left with judge's clerk in order to be delivered over by him to prothonotary. A note, with judge's return of writ, must be drawn out on a piece of parchment by attorney prosecuting *habeas*, which must be delivered to warden on commitment of prisoner.

*Middlesex.*

Form of  
commit-  
ment-piece.

*Middlesex*, to wit, *A. B.* (as described in proceedings) is committed in execution to the warden, &c. at the suit of *C. D.* for (the debt and damages) there to remain until, &c.

*R. C.* } Judgment, *Mich. Term*, 12 *Geo. 3.*  
attorney. }  
Roll.

Note,—If prothonotary or filacer doth not attend to take bail, then draw out the following recognizance.

Form of re-  
cognizance  
on habeas.

*Michaelmas Term*, 12th *George the Third*.

*London*, to wit, { *A. B.* is delivered to  
where cause removed to. } bail on a writ of ha-  
beas corpus.

To

*C. D.* of, &c. yeoman,

*R. R.* }  
Attorney. }

and

*E. F.* of, &c. tailor.

At the suit of the plaintiff  
(or plaintiffs, as the case is)  
in the plaint.

This

This bail-piece is ingrossed on a 2 s. piece of stamped parchment in this form, and bail put in thereon before judge, as on any other bailable writ.

The same doctrine holds on laying *venues*. Note.  
in causes removed, if same are transitory, as in other actions in this court; unless same are removed from the places following; courts of Canterbury, Southampton, Hull, Litchfield, or Pool, where, though transitory *venue* must be laid in county wherein such city or town is, as Kent, Southampton, York, Stafford, or Dorset. Rule, Mich. 1654. C. B.

*Habeas corpus* to an inferior court to remove body and cause, may be brought any time before cause tried in such inferior court. Practical remarks. Stat. 16 Car. 1.

If upon *habeas cum causa* it be returned, that the prisoner is in execution, he shall be remanded to prison till judgment satisfied. Stat. 2 Hen. 5.

No *habeas* or process to be allowed (*except on writs of error and attain*) to stay or remove any cause in any court which has jurisdiction to hold plea of such cause, unless same be delivered to the proper officer before issue or demurrer joined; if not joined within six weeks after the arrest or appearance, and if such cause returned by *procedendo*, it cannot afterwards be removed or stayed. Stat. 21 Jac. 1.

Sheriff not obliged to bring up the prisoner upon a *habeas*, unless tendered his reasonable charges. But the court expects that writ should be obeyed; and if prisoner refuses to pay gaoler, court will remand him. *Rep. and Cases of Practice*, C. B. 140.

A *habeas* lies at the suit of the King to the Cinque Ports, but not at a subject's suit. *MSS. Cases*, C. B.

Defendant returned in custody on *habeas*, cannot be discharged until bail perfected.

If



If it is necessary to bring up the record from an inferior court to correct some error in their proceeding thereon, it must be done by suing out a writ of *certiorari* directed to such inferior court. If the defendant does not prosecute his *habeas* with effect, the plaintiff may carry back the cause by *proce'endo*. For forms and directions on such writs, see the *Complete Practice of the K. B.* under head of *Habeas*.

**DIRECTIONS** for suing out and prosecuting a **SCIRE FACIAS** to revive judgment, or to fix bail.

**When a scire facias to revive judgment necessary, and when not.** If execution not taken out in a year and a day after judgment obtained, where parties are all living, plaintiff may at any time within the year issue execution, (though no caption or levy made) and continue same on roll, to save expence of reviving by *scire facias*, or after revived, to prevent a further revival.

**Note.** *Scire facias* must be brought in county where original action commenced.

If plaintiff or defendant (or one of the plaintiffs or defendants, if more than one of either) die, no execution can issue on judgment till same is revived by *scire facias*, because there must be a new judgment to warrant execution. Stat. 8 & 9 Will. 3.

If any of the parties die after interlocutory, and before final judgment, suit doth not abate by such death, but may be revived by *scire facias*. Ibid.

If error brought by defendant, and plaintiff *nonproffes* same, no *scire facias* necessary, though after the year and day; the same on an injunction out of Chancery. *Salk.* 322.

**When to be had without, and when on motion.** Any time within seven years, if above seven years, and under ten years, motion in the treasury sufficient. If above ten years, there must be

be an affidavit made by plaintiff that debt is unsatisfied, judgment not vacated, and that defendant is living. *Vide* page 36.

If after judgment revived by *scire facias* on motion, defendant dies before execution issues, there must be a new *scire facias*, but no fresh motion necessary. *Salk.* 598.

All *scire facias* (where original suit is by bill) need no more than fifteen days exclusive between *teste* of first *scire facias* and return of second, and each writ to have eight days between *teste* and return: If by original, fifteen days exclusive between *teste* and return of each; second may be tested on return day of first. The first *scire facias* to be delivered to sheriff some time before return, and second to be left with him at least four days before it is returnable.

As to *teste* and return of *scire facias*.

All writs of *scire facias* to be entered on roll of term first *scire facias* issues.

Note.

If plaintiff does not proceed on *scire facias* in a year and a day after judgment revived, he must take out new *scire facias*.

George the Third, &c. To the sheriffs of London, greeting: WHEREAS C. D, lately in our court, to wit, in the term of the Holy Trinity last past, before Sir William De Grey, Knight, and his companions then our justices of the Bench at Westminster, by consideration of the same court, hath recovered against A. B. late of, &c.

Form of *scire facias* to revive judgment in case.

1. which to the said C. in the same court, were adjudged for his damages, which he had sustained by occasion of the not performing certain promises and assumptions made by the said C. to the said A. whereof the said C. was convicted, as by the record and proceedings remaining in our same court before our justices at Westminster, manifestly appeareth: Nevertheless execution of the said judgment still remaineth to be made, as on the information of

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the said C. D. we have been given to understand and because we are desirous that those things which are rightly done in our same court should have due execution: We command you, that by good and lawful men of your bailiwick, you cause it to be made known to the said A. that he be before our justices at *Westminster*, on *(the return)* to shew if he hath or knows of any thing to say for himself, why the said C. ought not to have execution against him for the damages aforesaid, according to the form of the recovery, if it shall seem expedient to him, and have there the names of those by whom you shall so cause it to be made known to him, and this writ. Witness Sir *William De Grey*, Knight, &c.

This writ must be ingrossed on a double twelve penny piece of stamped parchment. You make a precipe for office.

Precipe for  
scire fac.

*Middlesex*, to wit, *scire facias* to revive judgment for C. D. against A. B. in case.

R. R. } Returnable *(the return.)*  
plaintiff's attorney.

Nov. 1772.

To revive  
judgment.

Carry precipe and writ to prothonotary; pay him signing 1 s. 4 d. sealing at seal office 7 d.

If sheriff on first *scire facias* return same *scire faci*, that is, that he hath given notice, plaintiff must give rule with secondary thereon. It is a four day rule, exclusive of the day given; if *Sunday* happens to intervene, defendant hath all the next day to answer same. Make note for rule thus:

A. B. } Rule on *scire fac*.  
against }  
C. D. }

R. R.  
plaintiff's attorney.  
Pay



Pay for rule and duty 2 s. If defendant intends to appear, the usual practice is for his attorney to give plaintiff's attorney notice in writing, that defendant appears to *sci. fac.* This notice must be given, and plea delivered within the time of rule. If this step is taken, plaintiff proceeds to issue or judgment, as in a common action in debt on judgment. On defendant's neglect, plaintiff enters up judgment, and takes out execution against him.

If sheriff returns first *scire facias nihil habet*, meaning that defendant hath nothing in his bailiwick, plaintiff must make out a second *scire facias*, which, on sheriff's returning as before, these two writs, in construction of law, amount to a *scire feci*, when you must give rule as before; and if defendant does nothing thereon within the time limited, you may sign judgment, and take out execution.

Sheriff is not obliged to warn defendant till day of return of first *scire facias*; if returned, *scire feci*; if two, no warning is necessary, or given. *MSS. Cases, C. B.*

A *sci. fa.* to revive a judgment is a continuance of the suit, and must be brought in that county where original action is laid. A *sci. fa.* against bail is the first proceeding. *Allen 12. Lutw. 1282, Barnes 4to Edit. 97.*

The second *scire facias* is ingrossed on same stamp as first, and the same paid for signing and sealing. The form of it is the same as the first.

If defendant appears and pleads, and same is brought to issue, plaintiff must in his *venire distringas* and *jurata*, after the words *in a plea of trespass on the case*, (or as original action is) add, *Whereupon a scire facias, and so forth.*

Manner of  
fixing an ex-  
ecutor or ad-  
ministrator's  
with debt of  
their testator  
or intestate.

If plaintiff after judgment by default against an executor or administrator, wants to fix their property with the debt of testator due to him, he may do it either by *scire fieri* inquiry, or by action of debt on judgment. If by action of debt, he must in declaration suggest a *devastavit* committed by executor on the goods and effects of his testator. If he proceeds by *scire fieri* inquiry, he can have no costs after first judgment, if defendant does not appear and plead to *scire facias*. MSS. Cases, C. B.

To fix bail  
by *scire fa-*  
cias.

Before you can proceed against bail by action of debt on recognizance, or by *scire facias*, (unless in error or outlawry) you must sue out a *ca. sa.* (see form of *ca. sa. on execution*) against the principal, and get same returned *non est inventus*. The *ca. sa.* must have eight days exclusive between the *testa* and return, and must be left in the sheriff's office four days exclusive before the return thereof. *Salk* 599, 602.

It need not be filed before *scire facias* issues; it is good practice if done afterwards. 1 *Lew.* 225.

If defendant dies before return of *capias ad satisfaciend.* against him, his bail, pleading same to *scire facias*, may be discharged. *Ld. C. J. Gilb.* page

Form of *scire*  
*facias* against  
bail on re-  
cognizance.

George the Third, &c. To the sheriff of *Middlesex*, greeting: WHEREAS *E. F.* late of, &c. and *T. M.* late of, &c. lately in the court of the Lord the now King here, to wit, in (the term bail was put in) in the 12th year of the reign of the said Lord the now King, before Sir *William De Grey*, Knight, and his companions justices of the said Lord the King of the Bench here, to wit, at *Westminster*, have acknowledged, and each of them hath acknowledged to owe to *A. B.* (the plaintiff) the sum of 100 l. which said sum of 100 l. the said *E. F.* and *T. M.* for them-

hemselves, and their heirs have consented and granted, and each of them for himself and his heirs hath consented and granted, shall be made of their and each of their lands and chattels, and levied to the use and behoof of the said *A. B.* AND WHEREAS *C. D.* late of, &c. (the defendant) in the same term, before the same justices of the said Lord the King, in the same court of the said Lord the King, of the Bench here, to wit, at *Westminster* aforesaid, hath acknowledged, that he owes to the said *A. B.* the sum of 200 l. which said sum of 200 l. the said *C. D.* for himself and his heirs hath consented and granted, shall be made of his lands and chattels, and levied to the use and behoof of the said *A. B.* on this condition, that if it shall happen that judgment should be given in the same court of the said Lord the King of the Bench here, for the said *A. B.* against the said *C. D.* in a certain plea of trespass on the case to the damage of 100 l. by the said *A. B.* against the said *C. D.* in the same court of the said Lord the King of the Bench here prosecuted then the said *C. D.* all the damages which to the said *A. B.* against the said *C. D.* in the same court of the said Lord the King of the Bench here, in the said plea, should be adjudged should satisfy, or his body on that account to the prison of the *Fleet* should render: And altho' the said *A. B.* in *Trinity Term*, (*term judgment recovered*) in the 12th year of the reign of the said Lord the now King, before the said Sir *William De Grey*, Knight, and his companions justices of the said Lord the King of the Bench here, to wit, at *Westminster* aforesaid, by the consideration of the same court, hath recovered against the said *C. D.* (*the debt and costs taxed*) which to the said *A. B.* in the same court of the said Lord the King of the Bench here, were adjudged for his damages which he hath

Z 3

sustained



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sustained by reason of the trespass on the case aforesaid, whereof he is convicted, as by the record and proceedings thereof, which the said Lord the King hath lately, for certain reasons, caused to be brought into the court of the said Lord the King of the Bench, and which, in the same court of the said Lord the King of the Bench, in all things affirmed now remain appears on record: NEVER-THELESS the said *C. D.* the damages aforesaid to the said *A. B.* hath not satisfied, nor his body on that account to the prison of the *Fleet* rendered, as the King hath by suggestion of the said *A. B.* understood, and because, &c. that by good, &c. he should give notice to the said *E. F.* and *T. M.* and *C. D.* that they should be here on this day, to wit, (*return of sci. fa.*) to shew if any thing, &c. to wit, to the said *E. F.* why the said 100 l. by him in form aforesaid acknowledged, of his lands and chattels to the said *T. M.* why the said 100 l. by him, &c. and to the said *C. D.* why the said 200 l. by him, &c. ought not to be made, &c. to the use and behoof of the said *A. B.* levied according to the form of the recognizance aforesaid, if it shall seem expedient: And that you have there the names, &c. Witness Sir William De Grey, Knight, &c.

To beingrossed on same stamp, and signed and sealed as *scire facias* to revive; second *sci. fa.* the same form as above.

The same steps must be taken on *scire facias* to fix bail, if one or two writs as on *scire facias* to revive, and bail may have the same relief thereon, only the first *sci. fa.* is signed by filacer where *capias* taken out, and second by prothonotary.

On *sci. fa.* against bail, your rule given with secondary must be thus :

|  |   |   |
|--|---|---|
| <p>A. B.<br/>against<br/>F. F. and J. G. the<br/>bail of C. D.</p> | } | <p>Rule on <i>scire fac.</i><br/><br/>R. R.<br/>plaintiff's attorney.</p> |
|--|---|---|

If no *ca. sa.* sued out against principal, and filed, bail may plead same to *scire facias*, and be discharged, but court will not relieve on the *scire facias* by motion. Practical remarks.

*Ca. sa.* may be bad as to principal, and yet sufficient to ground *scire facias* against bail, for bail cannot take notice of error in *ca. sa.* if returned and filed. *MSS. Cases, C. B.*

In strictness of law, recognizance of bail is forfeited on *ca. sa.* returned *non est inventus*, and if principal dies after and before *scire facias* issues, they are absolutely fixed.

The court, *ex gratia*, does permit bail to render principal any time before return of first *scire facias*, if returned *scire feci*; or if two, before return of second *nihil, sedente curia*.

You may sue out *ca. sa.* to charge bail, notwithstanding writ of error brought on original action. *Fitz. G. 175.*

If principal dies before *ca. sa.* returned, and before filed, if time limited for doing same is not out, court will relieve in favour of bail. *Lill. Abr. 163.*

Before you take out *scire facias* against bail, all your proceeding in original action must be entered on roll, and carried in.

If bail taken in the country on the original action, and transmitted, *scire facias* may be sued out in *Middlesex*, or where taken. *Lutw. 1287. Salk. 564, 600.*

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Bail in error entered into at judge's chambers in London, *scire facias* against them must be brought in London; but if recorded at Westminster, *sci. fa.* may issue either in London or Middlesex. Sir Geo. Cooke's Cases, C. B. page 31.

The *alias scire facias* must not issue till first *scire facias* is returned. Salk. 599.

The warning or summoning defendant on *scire feci* returned, is done by a precept from sheriff served on defendant; it may be done on return day of *scire facias*. MSS. Cases, C. B.

*Scire facias* against bail must lie four days in the office before the return; but in error, need not do so.

No damages can be recovered on a *scire facias*; nor could costs, till 8 & 9 Will. 3.

There need not be 15 days between *teste* and return of each *scire fa.* against bail, 15 days between *teste* of first and return of second, is sufficient. Sir Geo. Cooke's Cases, C. B. page 114.

## Hilary Term, &amp;c.

## Manwarring.

Form of declaration on *scire facias*, where bail appear.

London, to wit, It was commanded to the sheriffs, WHEREAS, &c. (*here insert sci. fa. verbatim*) If no appearance to first writ, state sheriffs return, then go on with second and sheriffs return thereto: And now here at this day comes as well the said A. B. by C. B. his attorney, as the said E. F. and T. M. (*the bail*) summoned by R. R. their attorney: And upon this the said A. B. prayeth execution to be adjudged to him against the said E. F. and T. M. of the debt and damages aforesaid, to be levied of



of the goods and chattels of the said *E. F.* and *T. M.* according to the form and effect of the said recognizance, &c.

To be ingrossed on treble penny stamped paper, and delivered to attorney concerned for bail; give rule to plead with secondary, as in common case. Defendant has the same time to plead as in another action.

And the said *E. F.* and *T. M.* on the same day being summoned by *R. R.* their attorney, come and say, That the said *A.* ought not to have his execution against them for the debt and damages aforesaid, (or as the nature of the action is) because they say, That the said *A.* after the rendition of the judgment aforesaid, to wit, in *Easter Term*, &c. (the time plaintiff sued out *ca. sa.* against defendant) obtained and prosecuted out of the said court of the said Lord the King, of the Bench at *Westminster* aforesaid, of and on the judgment aforesaid, a certain writ of the said Lord the King of *capias ad satisfaciend.* against the said *C. D.* (the defendant in original action) directed to the sheriff of (the sheriff of county where *ca. sa.* sued out) by which said writ, the said Lord the King commanded the then sheriff of (the county) that he should take the said *C. D.* if he should be found in his bailiwick, and safely keep him, so that he might have his body before the said Lord the King's justices at *Westminster*, on (the return of *ca. sa.*) to satisfy to the said *A.* the debt and damages aforesaid, (or as the nature of the action is) whereof he was convicted; and that he should have then there the said writ, which said writ of *capias ad satisfaciend.* the said *A.* afterwards, to wit, on the (any day after writ sued out, and before executed) at (place where delivered) in the county aforesaid, delivered to (the sheriff by name) being then sheriff of the county aforesaid, in due form of law to be executed, by virtue of which said writ

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writ of *ca. ad satisfaciend.* the said (*the sheriff by name*) being then as aforesaid sheriff of the county of (*name of county*) afterwards, and before the return of that writ, to wit, (*the day defendant was taken*) took and arrested the said C. at (*place where*) aforesaid, in the county aforesaid, and him the said C. in his custody, in execution for the debt and damages aforesaid, then and there had and detained, until the said C. afterwards, to wit, on the (*the day defendant paid the judgment*) at aforesaid, in the county aforesaid, paid and satisfied the said A. the debt and damages aforesaid; and this they are ready to verify; wherefore they pray judgment, if the said A. ought to have his execution against them for the debt and damages aforesaid, &c.

J. Burland.

PROCEEDINGS *against*  
PRISONERS.Stat. 4 & 5  
W. and M.

Stat. 4 & 5 W. & M. If any defendant be taken in custody at the suit of any person, on any writ issuing out of any of the courts at Westminster, and detained in prison for want of sureties for their appearance, the plaintiff, on such writ may, before the end of the next term after such process shall be returnable, declare against such prisoner in the court out of which the writ shall issue; whereupon the said prisoner shall be charged in custody, and may cause a true copy thereof to be delivered to such prisoner, or to the goaler, or keeper of the prison, or goaler in whose custody such prisoner shall be, to which declaration the said prisoner shall appear and plead; and if he doth not appear and plead to same, the plaintiff, in such case, shall have judgment in such manner as if the prisoner had

had appeared in court, and refused to answer or plead. In all such declarations, it shall be alleged in custody of what sheriff, bailiff, or steward of any franchise, or other person having the execution and return of such writ, such prisoner shall be at the time of such declaration, by virtue of the process of the said court, at the suit of the plaintiff, which allegation shall be as effectual as if such prisoner was in the custody of the warden of the Fleet.

On the above statute the court grounded the following rule :

*Easter 5 W. & M* It is ordered,

*First*, That no copy of any declaration be delivered to a prisoner in custody, before the day of the return of the process upon which the defendant was taken, or charged in custody. Rule, C. R. Easter 5 W. & M.

*Secondly*, That no rule be given for the defendant in custody to appear and plead to any declaration against him, till an affidavit be filed with the proper secondary of the delivery of a copy of such declaration, and the time when, and the person to whom, the same copy was delivered ; and a copy of such affidavit be produced to the prothonotary before signing of judgment, together with a certificate from the proper officer, that no appearance is entered with him.

*Thirdly*, If a copy of the declaration be delivered before one month of *Easter*, or the Morrow of *All-Souls*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Easter* or *Michaelmas Term*, judgment may be entered against him upon the certificate as aforesaid, if rules have been given ; but if he doth not enter his appearance as aforesaid, before the end of ten days after the term, he shall remain until the next term, unless the action be



## The Modern Practice of the

be in *London* or *Middlesex*, and the defendant be in prison within forty miles of the city of *London* and *Westminster* then, tho' he doth appear before the expiration of ten days after the end of the term, he shall plead two days before the effoin day of the next term, and in default thereof, rules having been given, judgment may be entered against him as aforesaid.

*Fourthly*, If a copy of the declaration be delivered on or after one month of *Easter* in *Easter Term*, or the Morrow of *All-Souls* in *Michaelmas Term*, or in *Hilary* or *Trinity Term*, and the plaintiff thereupon shall give rules to appear and plead, if the defendant enter his appearance two days preceding the effoin day of the next term, he shall imparle until the said next term; but if he does not appear within that time, judgment may be entered against him as aforesaid.

*Fifthly*, If the writ be returnable in one term, and a copy of the declaration be delivered before the effoin day of the next term, the plaintiff in such next term may give rules to appear and plead; and if the defendant does not enter his appearance and plead, upon the expiration of the rules, judgment shall be entered against him as aforesaid.

*Sixthly*, If the declaration be not entered or left in the office before the end of the next term, after the writ or process (by which the prisoner was taken or charged in custody) be returnable, and an affidavit made and filed in manner aforesaid, before the end of twenty days after such term, (*Easter Term* excepted, and within ten days after *Easter Term*) the prisoner shall be discharged upon entering of his appearance with the proper officer by writ of *superseas*, made by him according to the ancient practice of this court.

*Seventhly*,

*Seventhly*, If any goaler, or keeper of a prison, having received a copy of a declaration against a prisoner in his custody, shall suppress the same, or not deliver it forthwith to such prisoner, an attachment shall be issued against him.

Rule, *Easter 8 Geo. 1.* It is ordered,

That if any plaintiff shall declare against any defendant in custody of the warden of the *Fleet* prison, or of any sheriff or other officer by virtue of process out of this court, and shall not further proceed to judgment within three terms after such declaration delivered inclusive of the term in which the declaration shall be delivered, defendant having appeared. Or if any plaintiff having obtained judgment in this court in any action against any defendant, a prisoner as aforesaid, and shall not charge such defendant so remaining a prisoner in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, or within two terms then next following, on any judgment then had, then such defendant so remaining in prison, may be discharged out of custody, where he shall be so detained by *superfedeas*, to be allowed by one of the justices of this court, if cause shall not be shewn by the plaintiff, or his attorney, why such plaintiff had not proceeded before that time to judgment and execution as aforesaid, upon notice to either of them given by the defendant's attorney or agent, and oath made of such notice given: and if any defendant hath or shall render him or herself, or be rendered to the *Fleet* prison, in discharge of his or her bail, at the suit of any plaintiff where no further proceedings by declaration have been had

Rule, C. B.  
Easter 8  
Geo. 1.

A a

against



against such defendant so rendered before such render, unless plaintiff shall declare against such defendant within two terms after such render, and where any declaration hath been delivered against such persons so rendering him or herself, or being rendered, or judgment has been had against him or her before such render, unless the plaintiff shall proceed to judgment upon such declaration delivered, within three terms after such render, (defendant having appeared) and charge such defendant in execution within two terms after such judgment obtained, such defendant may be discharged out of custody by *superfedeas*, to be allowed by one of the justices of this court, if cause shall not be shewn to the contrary as aforesaid, by the plaintiff or his attorney, upon notice to either of them given by defendant's attorney or agent, and oath made of such notice given.

Rule, C. B. Every prisoner charged with one or more  
19 Jan. 3 actions (on the master's side) to pay warden for  
Geo. 2. commitment-fee 1 l. 6 s. 8 d.

On the common side, where not intitled to the poors box, to pay warden 13 s. and 4 d.

For his discharge 7 s. and 4 d.

Every prisoner on the master's side having a bed to himself, to pay to warden for chamber room and bed *per week* 2 s. and 6 d.

If two in a bed, each 1 s. and 3 d.

If prisoner finds his own bed, *per week* 1 s. and 3 d.

If two in a bed, 7 d. halfpenny each.

Every prisoner not intitled to the poors box, to pay turnkeys on commitment 2 s.

On a commitment on render at judge's chambers, to tipstaff 1 s. and 8 d.

On a *habeas corpus* at judge's chambers, to tipstaff 4 s. and 2 d.

On a commitment in court, to tipstaff 7 s. and 6 d.



IT IS ORDERED, That no copy of a declaration delivered at the *Fleet* prison against any prisoner there, shall be a sufficient charge to hold such prisoner to bail, or to retain such prisoner in custody for want of bail, unless affidavit that plaintiff's cause of action amounts to 10 l. and upwards be first made and filed in prothonotary's office, and an indorsement thereof made by prothonotary or his deputy, upon copy of declaration, signifying the sum specified in such affidavit, for which sum and no more bail shall be required.

IT IS ORDERED, That in all cases where a prisoner in the *Fleet*, or other goal or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof, by *superfedeas*, for want of prosecution, and such prisoner be afterwards arrested or detained in custody by action of debt brought upon a judgment obtained in the cause wherein such prisoner was so discharged, or ordered to be discharged, that a common appearance shall be accepted for the defendant in such action of debt on judgment.

It must be delivered before the end of second term after return of process, to the *keeper*, *goal*er, or *turnkey* of such prison where defendant is in custody. Pay him entering same 1 s. and at the same time inquire (for the purpose of making an affidavit thereof) if defendant is not his prisoner. You may deliver declaration to prisoner yourself, or to the turnkey, who is obliged to deliver same to him, or court on motion for such contempt will grant an attachment against turnkey. Rule, *Easter 5 W. & M. and Easter 8 Geo. 1. C. B.*

If defendant in custody on process out of the *K. B.* be committed by this court to the *Fleet* prison, before plaintiff in the action declares against such defendant, the plaintiff in such action

Rule, C. B.  
Hil. 8 Geo.

SAME  
TERM.

Declaration  
against a pri-  
son in custo-  
dy on render  
or otherwise  
when to be  
delivered.

Manner of  
charging de-  
fendant in  
custody in  
this court.

tion cannot proceed against the defendant in *K. B.* without removing him back to *K. B.* by *habeas corpus ad respond'*. He may declare against him in this court, and in default of declaring against him in this court in due time, court will discharge defendant. The rule is, That after declaration delivered against prisoner, the action must be continued in that court wherein declaration was delivered, tho' pending same, defendant is removed to the prison of another court. If action supersedeable, the *superseas* must issue out of the court in which plaintiff declared.

If defendant is served with process, and before declaration delivered becomes a prisoner in the *Fleet*, you must proceed against him in same manner as if in custody, and you want to charge him with an action at your suit.

How to declare against prisoner in a county goal.

Make two copies of declaration on treble penny stamped paper, *viz.* one to deliver to keeper or prisoner, the other to annex to affidavit of delivery of such declaration to be filed with secondary before the end of twenty days after the second term, *Easter Term* excepted: If in *Easter Term* it must be filed in ten days after such term.

When in the *Fleet* prison.

Make two copies of declaration on treble penny stamped paper. Carry them to prothonotary's office to be entered and marked. One copy must be then delivered to defendant or turnkey of prison where defendant is in custody, and other annexed to affidavit of such delivery, and filed with secondary.

No rule to appear and plead can be given with secondary, until affidavit of delivery thereof is filed; tho' when prisoner is in a county goal, declaration need not be entered with prothonotary before the delivery. It is sufficient if entered any time before rule to appear and plead given. If defendant is in the *Fleet*, it must

must be entered with prothonotary before delivery. Stat. 4 & 5 W. & M.

Before you deliver a declaration against such prisoner, the plaintiff must make an affidavit that his cause of action amounts to 10 l. and upwards, which must be filed in prothonotary's office; and the declaration to be delivered must be indorsed by prothonotary, signifying the sum sworn to, for which sum only bail shall be required. Rule, *Hil. 8 Geo. 2. C. B.*

How to charge a prisoner in the Fleet with a new action.

This rule extends only to cases where the declaration against the prisoner is the first process.

There must be a *capias ad respond.* directed to the sheriff of the county where defendant is in custody.

How when in Newgate, Ludgate, or other county goal.

Must be given with secondary. Pay for same 1 s. and 10 d.

Rule to plead.

Upon filing your affidavit of delivery of declaration with secondary, he gives a rule to plead on the back of declaration to be delivered to prisoner, (which is always in eight days); if no appearance entered, and plea pleaded, prothonotary will sign judgment without your having an office-copy affidavit of delivery of declaration, on your producing a certificate from filacer where writ sued out, that defendant hath entered no appearance. Pay for filacer's certificate.

When to be given when defendant is in the Fleet.

An affidavit must be filed with secondary of the delivery of declaration, or prothonotary will not sign judgment for want of appearance and plea, till you produce to him an office-copy of the affidavit of the delivery of such declaration, and a certificate from the proper officer that no appearance is entered for defendant. Rule, *Easter 5 & W. & M. C. B.*

When in a county goal.

Affidavit of delivery of declaration being filed, if defendant does not appear in ten days after *Easter* or *Michaelmas Terms* respectively,

When to appear and plead on declaration de- rule



livered be-  
fore third  
return of  
Easter and  
Michaelmas  
Terms.

rule being given, plaintiff may sign judgment. If defendant doth appear, he shall imparle till the next term, unless action be in *London* or *Middlesex*, and defendant be in prison within forty miles of *London* or *Westminster*; in that case, he must plead two days before the essoign day of the next term.

When deli-  
vered after  
third return  
of Easter or  
Michael-  
mas, or any  
time in Hil.

If defendant appears two days before the essoign day of the then next term, he hath an imparlance to the next term; but if he does not appear in that time, the rule to plead being out, plaintiff may sign judgment. or Trin.

When on  
process re-  
turnable one  
term, and  
declaration  
delivered

The plaintiff in such next term may give rules to appear and plead; and if the defendant does not within the time thereof comply with such rules, plaintiff may sign judgment. before the effiga day of the next.

Issue, trial,  
judgment,  
and execu-  
tion.

Plaintiff must deliver issue, which is the same as in a common case, and proceed to trial or judgment within three terms after declaration delivered, and the same after render, if declaration was delivered before such render; and to execution, in two terms after judgment, including the term in which the said judgment shall be signed, or defendant may be discharged for want thereof.

How to  
charge pri-  
soner in exe-  
cution in  
the Fleet.

Make out a *bab. cor. ad satisfaciend.* on a 5 s. stamp. Pay prothonotary signing same 1 s. and 4 d.; sealing at seal office 7 d. Get a judge's *fiat*; pay for same 4 s. When done, carry same to clerk of the papers at the Fleet prison four days before the return of the same; pay him 9 s. and 2 d. Enter proceedings on the roll, and carry in same; pay the treasury-keeper bringing roll into court 2 s. on which the final judgment must be entered; pay officer bringing

bringing up defendant 10 s. and 6 d. To the crier, 2 s. To the secondary for court-fees about 9 s.

A *ca. fa.* must be made out on a 2 s. stamp, which must be signed and sealed as usual, and a warrant thereon, which must be lodged with the goaler in whose custody defendant is. When in the custody of the sheriff.

If for want of declaration, and defendant is in a county goal, get certificate from the goaler of the causes he is charged with; pay him for same 3 s. 4 d. and also a certificate from the prothonotary's office, that no declaration is filed against him. Pay for certificate about 1 s. 8 d. then get the judge's *fiat*; pay for same 4 s. which done, you file same with filacer, where the original writ was signed. Pay filacer filing *fiat* nothing, and enter an appearance with him as in a common case, when he will sign your *superfedeas*. How to discharge a defendant in custody for want of plaintiff's proceeding.

You may do this business by summons before a judge of the court, to shew cause why defendant should not be discharged for want of a declaration. *Vide* head of *Summons*, page 145.

Take out summons before a judge of the court, to shew cause why *superfedeas* should not be granted to discharge defendant out of custody, plaintiff not having proceeded to judgment and execution in due time; the judge will make an order on first summons, if no cause shewn to the contrary, for a *superfedeas*, on his entering a common appearance. How to discharge a prisoner when plaintiff does not proceed to judgment or execution in due time.

*Note.*—After declaration prothonotary signs *superfedeas*.

George the Third, to the sheriffs of London, greeting: WHEREAS C. D. is detained in our prison, under your custody, by virtue of our writ of *capias* issued out of our court before our justices at *Westminster*, returnable before our said justices on *(the return)* to answer A. B. in a plea of trespass; and also in a certain plea of trespass on the case, upon promise,

TO

to the damage of the said *A.* l. whereby  
 l. bail was directed to be taken; but be-  
 cause it sufficiently appears to our said justices at  
*Westminster*, that the said *C.* has appeared by  
*C. B.* his attorney, to answer the said *A.* in the  
 plea aforesaid: We command you, that if the  
 said *C.* be detained in our prison, under your  
 custody, by virtue of the said writ, and for no  
 other cause, that then you suffer him to go at  
 large, as you will answer the contrary at your  
 peril. Witness, Sir *William De Grey*, Knight,  
 at *Westminster*.

This writ must be ingrossed on a double two  
 shillings stamped piece of parchment. Pay  
 prothonotary signing same 5s. 4s. sealing at seal  
 office 7d. when you carry same to gaoler in  
 whose custody defendant is, on which he dis-  
 charges him.

Note.

The writ of *supersedeas* varies in its form  
 according to the cause for which it issues.

Practical re-  
 marks.

In order to charge defendant in custody in a  
 county gaol, *ca. sa.* must be delivered to sheriff  
 before expiration of second term, and warrant  
 thereon must be delivered to gaoler in whose  
 custody defendant is, or court will grant *super-*  
*sedeas.* *MSS. Cases, C. B.*

After a defendant is supersedeable, tho' he  
 don't avail himself thereof immediately, yet  
 plaintiff, in such action, cannot repair his ne-  
 glect, so as to detain him in custody. *Sir Geo.*  
*Cooke's Cases, C. B. page 34.*

A prisoner in custody for a contempt, cannot  
 be charged with a declaration without leave of  
 court on motion. *Sir Geo. Cooke's Cases, C. B.*  
*page 27.*

If he accepts declaration, and suffers judg-  
 ment to go against him, he waives his advan-  
 tage of the irregularity. *Ibid. page 31.*

De



Declaration against a prisoner in a county gaol need not be entered with prothonotary before delivery. *Ibid* page 114.

Man and wife in execution on one judgment allowed 2 s. and 4 d. each *per* week. *Ibid*. 125.

A person discharged on account of his plaintiff's not proceeding to judgment in due time, may be afterwards taken in execution. *Ibid*. 135, 136.

Otherwise if discharged for want of plaintiff's charging him in execution. *Ibid*.

A prisoner is to be allowed 2 s. and 6 d. *per* week of each plaintiff at whose suit he is in execution. *Ibid*. 140.

Affidavit on declaring against a prisoner not necessary where the declaration is not a new charge. *Ibid*. 144.

It is determined by the court, that where defendant is to be charged in execution on several judgments, there must be a *habeas corpus* on each judgment. *Barnes 4to Edit.* 223.

Where a defendant arrested by a *K. B.* process, and being charged with a *capias* in this court, at another person's suit removes himself to the *Fleet*; if plaintiff does not declare within two terms, defendant may apply for a *superseas* to this court; and so *vice versa* in *K. B.* *MSS. Cases, C. B.*

## PROCEEDINGS *against* PEERS and MEMBERS *of the* HOUSE of COMMONS.

All suits brought against peers and members of parliament in this court are by bill, as against an attorney or officer of the court.

MICHAEL-

# MICHAELMAS TERM, 11th George the Third.

*Manwaring.*

Form of  
bill,

TO THE JUSTICES of our Lord the King  
of the Bench.

MIDDLESEX, to wit, *A. B.* by *C. B.* his attorney, complains of *J. D. Esq;* having privilege of parliament in a plea of trespass on the case; for that, to wit, THAT WHEREAS, &c. (*as in a common bill, according to the nature of the action to the end*).

*C. B.* for the plaintiff, } Pledges { *John Doe,*  
to { and  
for the defendant. } prosecute { *Rich. Roe.*

This bill must be ingrossed on treble penny parchment, and signed by one of the prothonotaries. Pay signing same 1 s. when done, file it in filacer's office of county where action laid; pay him filing same 2 s. and 4 d. then you sue out writ of summons.

Form of  
writ of summons.

George the Third, &c. To the sheriff of Middlesex, greeting: WE command you, that you cause to be summoned *J. D. Esq;* (*the said J. D. Esq; having the privilege of parliament*) that he may be before our justices at Westminster, on (*the return*) to answer *A. B.* of a plea, that WHEREAS, &c. (*as in bill, to the damage, &c.*) as he saith: And have there this writ. WITNESS Sir William De Grey, Knight, at Westminster, &c.

*This writ must be signed at bottom with filacer's name of county where action laid.*

Carry

# Court of Common Pleas.

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Carry this writ to filacer's office; pay him signing 8 d. *per sheet*; sealing at seal office 7 d. when done, carry it to sheriff's office, and get a summons thereon; pay for summons 2 s. 4 d. Give same to sheriff's officer, to serve on defendant; if he does not appear in time, sue out *distingas*.

*Middlesex*, to wit, *Distingas* for *A. B.* against *J. D. Esq;* (*having privilege of parliament*). *distingas*.  
C. B. Attorney. Returnable (*the return*).

George the Third, &c. To the sheriff of *Middlesex*, greeting: We command you, that you *Form of distingas* distrain *J. D. Esq;* (*having privilege of parliament*) by all his lands and chattels in your bailiwick, so that neither he nor any person by him lay hands on them, until you shall have other command from our justices at *Westminster* for so doing; and that the issues of the same you answer to our justices at *Westminster*, so that he be before them on (*the return*) to answer to *A. B.* in a plea of trespass on the case; for that WHEREAS, &c. (*as in bill to the end*) and to hear thereof his judgment for his former defaults: And have there this writ. WITNESS Sir William De Grey, Knight, at *Westminster*, &c.

To be signed by filacer of county where action laid.

Pay him signing *distingas* 8 d. *per sheet*; sealing at seal office 7 d.

The writ of summons and *distingas* are ingrossed on a double 1 s. piece of stamped parchment. Note.

If defendant does not appear at return of *distingas*, you must get sheriff to return same; pay him for return 2 s. 4 d. then sue out another *distingas*; pay signing same as before, sealing



sealing 7 d. ; deliver same to sheriff as before, and at return, get same returned by sheriff ; pay him for return 2 s. and 4 d. then sue out another *distringas* ; pay signing and sealing this writ same as first ; when attorney for the plaintiff may move in the treasury to enlarge the issues, which court will order to be increased to the amount of debt. It is a common motion, for which you pay a serjeant 10 s. 6 d. There is no occasion to give defendant's attorney notice, nor to make any affidavit of the facts or state of proceedings. Draw up rule with secondary ; pay for same 5 s. ; serve copy on sheriff ; call on him at return of third *distringas*, who will pay you the amount of debt and costs, after deducting for fees 12 s. 6 d. If defendant appears after having cast an esson, or after first *distringas* returned, plaintiff must proceed as on a bill against an attorney ; and when he hath obtained judgment, he must sue out *distringas*'s as before, till he hath recovered debt and costs.

10 Geo. 3.

By this statute, plaintiffs have a power to proceed and prosecute their suits against peers and members, notwithstanding the meeting of the parliament, and their persons only are protected from arrests.

An order of court, requiring the appearance of a peer or member of parliament, may be enforced by *distringas*. Same Statute.

The servants of peers and members of parliament, are, by this statute, deprived of any privilege they were intitled to from their respective masters, and may now be arrested and prosecuted as a common person. *Ibid.*

# PROCEEDINGS *by and against* ATTORNIES CLERKS *in* CHANCERY, &c.

## WHEN *by an Attorney.*

If an attorney sues for his fees in this court, it must be by attachment of privilege, though he may sue any person for a debt due to himself by the same process. *Vide same, page 53.*

If defendant appears, or puts in bail, at re-<sup>How to ap-</sup>turn of attachment, he must enter his appear-<sup>pear.</sup>ance with prothonotary, who also takes the bail. Pay for entering appearance 3 s. and 10 d.; putting in bail the same as on a common action.

## THE TERM.

*Middlesex*, to wit, *C. D.* late of, &c. was at-<sup>Declaration</sup>tached by writ of privilege issuing out of this ho-<sup>by attorney.</sup>nourable court, to answer *A. B.* Gent. one of the attornies of the court of our Lord the King of the Bench, according to the liberties and privileges of the same Bench, used and approved of in the same from time whereof the memory of man is not to the contrary, of a plea of trespass on the case, &c. and thereupon the said *A. B.* in his proper person, complains, That WHEREAS, &c. (*as in a common action, according to the nature of the case*).

You add pledges as in *K. B.*; it is ingrossed Note. on treble penny paper.

If attorney delivers or files his declaration, and gives notice thereof four days exclusive before the end of the term in which process is returnable, defendant must plead the same term, if rule given, and plea demanded.

B b

WHEN

WHEN *against an Attorney.*

An attorney cannot be proceeded against but in term time, *sedente curia*. It must be by bill filed against him, which against an attorney is the first process to commence the suit.

TRIN. TERM, 12th Geo. 3.

*Dickins.*

TO THE JUSTICES of our Lord the King  
of the Bench.

Form of  
bill against  
an attorney  
of C. B.

MIDDLESEX, to wit, *A. B.* by *C. B.* his attorney, complains of *C. D.* gent. one of the attornies of the court of our Lord the King of the Bench present here in court in his proper person; for that, WHEREAS, &c. (*as in a common declaration, to the damage, &c.*) And therefore he prays relief.

You add pledges as in *K. B.*

This bill must be ingrossed on a treble penny sheet of stamped parchment. Carry same to the court of Common Pleas at *Westminster*: get one of the criers to call defendant; pay him for the call 1 s. Then get it signed by prothonotary, who takes for entering bill according to the length; when done, annex a small piece of parchment, with a treble penny stamp to bill. Carry bill to secondary, who will give a rule thereon for defendant to appear. Pay for rule 1 s. 4 d. and give notice in writing, as in a common case for defendant to appear in four or five days. Rule, *Hilary 11 Geo. 2. C. B.*

If defendant appears, you deliver him a declaration.

TRIN.



## TRIN. TERM, 12th George 3.

Dickins.

MIDDLESEX, to wit, BE it remembered, Form of declaration against an attorney.  
 That on the *(the day bill was filed against him)* in this same term *A. B.* came here into court by *C. B.* his attorney, and exhibited to the justices of our Lord the King here, his certain bill against *C. D.* gent. one of the attornies of the court of our Lord the King of the Bench present here in court in his proper person, the tenor of which said bill follows in these words, &c.  
*(here insert bill verbatim to the end).*

The rest of the proceedings to issue or judgment, are the same as in an action against a common person, according to the nature of the case.

## MANNER of Forejudging an Attorney.

If defendant does not appear to bill, you ingross same with the memorandum, as in the former precedent, on a Common Pleas roll, and then continue the forejudger thus :

WHEREUPON the said *C. D.* being solemn- Form of a forejudger.  
 ly called, came not, therefore he stands fore-  
 judged from exercising his office of an attorney of this court for his contumacy, &c.

The same form, or an *incipitur* thereof must be ingrossed on a sheet of double 2 s. 6 d. stamped paper ; take them both to prothonotary's office for to be signed ; pay signing 2 s. then carry them to the clerk of the warrants to strike defendant off the roll ; pay him for so doing 1 s. and 4 d. He signs your forejudger paper, and keeps roll for his justification. This done,  
 B b 2 attorney

# The Modern Practice of the

attorney is forejudged, and you, or any other person, may proceed against him for a debt due, as a common person.

In a suit against a clerk, or other officer of the court, the same steps are to be taken as above, only you describe him in bill by his title office.

If an attorney is sued in an inferior court by any person whatsoever, whether an attorney or otherwise, he may bring his writ of privilege to be discharged from the same, which such inferior court must obey and allow, or judge on summons will grant a *superfedeas* to the action, or on motion of court an attachment.

Note.

In transitory actions against attorneys, *venue* must be laid in *London* or *Middlesex*, or defendant on motion may change same to *London* or *Middlesex*.

Form of writ of privilege to the sheriffs of London.

George the Third, &c. To the sheriffs of London, greeting: WHEREAS as well by reason of our royal dignity, as by an ancient custom in our court of the bench at *Westminster*, from time immemorial, used and approved of in the same, no attorney who is bound by oath to follow his function for us and our people, ought, nor for all the time aforesaid hath been accustomed to be taken, arrested, imprisoned, or against his will drawn or compelled to answer to any person not being an attorney or officer of some of our courts, before any judges secular, elsewhere or otherwise than by bill or bills to be filed against them in our said court, before our justices at *Westminster*, in or upon any pleas or complaints which do not concern us, (*pleas or causes of felony, appeals, and pleas of freehold, only excepted*): NEVERTHELESS, some evil disposed persons, not being attorneys or officers of any of our courts, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, in-

tend

tend to take, arrest, and imprison, or before you have drawn, or do intend, by your servants, to draw into pleas or complaints *C. D.* being one of the attornies of our court of the Bench at *Westminster*, whose constant attendance is required in our same court, to the detriment and manifest diminution of our dignity, the custom and privilege aforesaid, to the great damage of many of our subjects prosecuting and defending in our said court, and the no small prejudice and grievance of the same *C. D.* which, should it be permitted, would be for the future a very bad example for others: WHEREFORE the said *C. D.* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is just and reasonable shall be done for the said *C. D.* and likewise that the honour, custom, liberty, and privilege of our said court, should be inviolably preserved, do command and firmly enjoin you, and each and every of you, that you, and each of you, do wholly desist from taking, arresting, and imprisoning, or in anywise molesting the said *A. B.* at the suit of any person not being an attorney or officer of some of our courts, (*except as before excepted*), or from proceeding in any plaint before you, any or either of you, against him levied, or to be levied by whomsoever, not being so as aforesaid privileged; and if you, or any of you, have taken the said *C. D.* before the receipt of this writ, against the custom, liberty, and privilege aforesaid, that then you, and each and every of you, immediately discharge him from that arrest, telling the plaintiffs in those pleas and complaints from us, that they file their bills in the pleas and complaints aforesaid, according to the custom of our court of the Bench at *Westminster*, from time immemorial used and approved in the same against the said *C. D.* in our said court, before our justices at *Westminster*, to obtain justice there, if they



## The Modern Practice of the

shall think fit. Witness Sir William De Grey, Knight, at *Westminster*, &c.

*Indorse date when sued out.*

This writ must be ingrossed on a two shilling stamped piece of parchment. It is not signed; pay sealing 7 d. Then deliver it to the secondary of the court where action brought, whose fee for allowing same is 2 s. 8 d. for *superfedeas* and searching office 1 s. 4 d. If attorney is in custody, the *superfedeas* must be served on the bailiff in whose custody he is.

To all and every the officers of, &c.

**Superfedeas.**

If arrested discharge, if not forbear to arrest C. D. gent. at the suit of A. B. he having this day allowed his writ of privilege, as one of the attornies of his Majesty's court of Common Bench, at *Westminster*. Dated of 1772.

J. S.

*Nota*, The writ of privilege may be brought if attorney is chose into any parochial or ward office, that he is exempted from by statute. *MSS. Cases, C. B.*

## CLERKS in Chancery

Must be proceeded against for any debt due from them in the *Petty Bag-Office*, and the proper officer there directs and manages the proceedings, to whom you must apply for instructions.

**Practical remarks.**

An attorney cannot be arrested by a common person for any debt or demand of his own contracting; yet he loses his privilege if he becomes jointly bound with others, tho' not on note or bond colourably indorsed or assigned to an attorney for the purpose of bringing an action thereon.

He also loses his privilege in a real action at the suit of the King, or when he sues in *auter droit* as heir, executor, or administrator, or where money is attached in his hands by a foreign attachment in *London*. *Vent.* 298.

If plaintiff and defendant are both attornies of the same court, defendant has privilege and must be sued by bill. *Barnes 4to Edit.* 44.

Attornies forejudged and struck off the roll, are totally deprived of privilege during such forejudger, and are to be sued as common persons. *Roll's Abr.* 274.

An attorney hath no imparlance allowed to a bill filed against him, if done in time. *12 Mod.* 163.

An attorney of *K. B.* being sued in this court doth not waive his privilege by filing bail, but may plead same to that or any other action filed against him in the same term by the bye; but if he pleads in *chief* to first action, it is a waiver of privilege in all actions brought against him in same court that term. If brought into this court by attorney thereof, it is an *estoppel* to his privilege in that and all other actions brought against him in same term. So *vice versa* in *K. B.* against an attorney of this court. *Carth.* 377. But if in either, an attorney is sued as a common person, he may bring his writ of privilege in bar of such action.

Attorney cannot waive his privilege where he sues, or is sued in his own right, or in a joint action, which can be severed without prejudice. *1 Salk.* 2. *2 Roll's Abr.* 274. *1 Vent.* 298.

Attachment of contempt will lie against an attorney for putting to a process the name of an attorney of this court, without his authority for so doing. *MSS. Cases, C. B.*

Privilege of an attorney does not hold against the court of conscience in *London*. *Ibid.*

If

If attorney sues by original, or on any process except attachment of privilege, he thereby waives his privilege in such suit. 2 Lev. 39.

Note,—*The WAGER OF LAW, and WRIT OF AUDITA QUERELA, are now seldom used, but if wanting, the practitioner will find them in the Complete Practice of the K. B. page 272, and 277.*

## O U T L A W R Y.

In what cases  
outlawry  
will lie.

In a joint action, where one party is served or taken on process, and the other cannot be served or taken, it is necessary to proceed to an outlawry against the refractory party, before judgment can be obtained against either in the said action. As also *on original*, if defendant cannot be arrested on *capias*, *alias*, or *pluries*, the filazer will make out an exigent and proclamation, to which writ defendant must enter a common appearance, or put in special bail, according to the nature of the action; but if he does not, the plaintiff may take out a *capias ut legatum*, which writ is of two kinds, *general* or *special*; the general *capias* has a lien on the body only, the special affects defendant's goods, lands, tenements, and body also. If defendant is taken on either of these writs, he must give bail to answer the condemnation money.

Method of  
proclaiming  
defendant.

To prevent secret outlawries in personal actions, where the defendant has a known place of abode, a writ of *proclamation* must be awarded, having a *teste* and return as well as the writ of *exigent*, they both must be directed to the sheriff of the county where defendant resides. The sheriff is to make one proclamation in the county court,



court, a second at the general quarter sessions, and a third a month, at least, before the *quint-exact*, (or *fifth and last time of proclaiming defendant*) at the principal door of the parish church where defendant then resides, or last resided. The fourth and fifth proclamations are made at the two next following county courts, which are held but once a month: But in London the proceedings are much expedited, the court of hustings being held every fortnight.

Carry *precipe* for original to the curfitor of the county, who makes out same; in debt, he charges 2s. and 6d. in case, 2s. and 6d. first count, and 6d. every other, besides King's fine. You may make out *capias*, *alias*, and *pluries* yourself, for which he charges as on common *capias*, &c. get same returned by sheriff *non est inventus*, to ground outlawry, each of which writs must have fifteen days between the date and return; *capias* and *alias* are filed with the *custos brevium*. The *pluries* the exigenter keeps.

Manner of  
outlawing  
defendant.

On writ's being returned, file a warrant of attorney on the *pluries* with the clerk of the warrants; pay for same 4d. Clerk of the warrants stamps *pluries*, which done, carry *pluries* to exigenter of the proper county, who makes out exigent and proclamation. Rule, *Hil. 2 & 3 Jac. 2.*

You must get exigent and proclamation sealed, then carry exigent to one of the compters (if in London) to be returned; pay 1s.; and the proclamation to the county clerk; pay him 1s. (or to the sheriff of the county where defendant dwells) for defendant to be proclaimed. If in London, and on return of exigent, there are not five hustings returned, exigenter will make out *allocatur* to bring in five hustings, and when that is done, and proclamation returned, the defendant is outlawed. After proclamation returned, file same with *custos brevium*. And the exigent is carried

carried to exigenter to make out *capias ultigatum*.

**Exigent.**

**GEORGE** the Third, &c. To the sheriff of *Middlesex*, Greeting: WE command you, that you cause *A. B.* late of the parish of *St. Clement Danes*, in your country, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom of *England* he be outlawed, if he does not appear, then take him and keep him safely, so that you may have his body before us, (*the return*) wheresoever we shall then be in *England*, to answer to *C. D.* of a plea, for that, to wit, That whereas the said *A.* on, &c. (*here the whole declaration is inserted*) to the damage of the said *C.* of two hundred pounds, as it is said; and whereupon you did in fifteen days of *St. Hilary* last past, make a return to us, that the said *A. B.* was not found in your bailiwick, and have you there this writ. Witness, Sir *William De Grey*, Knight, at *Westminster*, the 6th day of *November*, in the twelfth year of our reign.

Indorse attorney's name, day, month, and year sued out.

**Warrant of attorney on exigent.**

*Middlesex*, to wit, *C. D.* puts in his stead *R. R.* his attorney, against *A. B.* late of, &c. of a plea, (*as case is*).

**Proclamation.**

**GEORGE** the Third, &c. To the sheriff of *Middlesex*, Greeting: WHEREAS by our writ we have lately commanded you, that you cause *A. B.* late of the parish of *St. Clement Danes*, in your county, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom

## Court of Common Pleas.

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of *England*, he be outlawed, if he shall not appear; and if he should appear, then that you should take him and keep him safe, so that you might have him before us, (*the return*) wheresoever we should then be in *England*, to answer to *C. D.* of a certain plea of trespass on the case, to the damage of the said *C.* of two hundred pounds, as it is said: WE therefore command you, that pursuant to the statute made for such purpose, in the thirty-first year of the reign of *Elizabeth*, late Queen of *England*, you cause the said *A. B.* to be proclaimed three several days, according to the form of the said statute; one of which proclamations to be made at or near the most usual church door of the parish where the said *A. B.* is an inhabitant, that he render himself to you, so that you may have his body before our justices at the aforesaid time, to answer the said *C. D.* of the plea aforesaid; and have you there this writ. Witness, Sir *William De Grey*, Knight, at *Westminster*, the 6th day of *November*, in the twelfth year of our reign.

Indorse attorney's name, day, month, and year sued out.

At my county court held for the county of *Return of Middlesex*, at the sign of the *Elephant and Castle*, exigent. in the parish of *St. Andrew, Holborn*, in the county aforesaid, on the                      day of                      in the year within written, the within-named *A.* was a first time demanded, and did not appear; and at my county court held for the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the                      day of                      in the year aforesaid, the said *A.* was a second time demanded, and did not appear; and at my county court held for the



## The Modern Practice of the

the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the

day of \_\_\_\_\_ in the year aforesaid, the

said *A.* was a third time demanded, and did not appear; and at my county court held for

the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the

day of \_\_\_\_\_ in the year aforesaid, the

said *A.* was a fourth time demanded, and did not appear; and at my county court held for

the said county of *Middlesex*, at the sign of the *Elephant and Castle* aforesaid, the

day of \_\_\_\_\_ in the year aforesaid, the

said *A.* was a fifth time demanded, and did not appear.

Therefore by the judgment of *Thomas Phillips*, Esq; and *Edward Umfreville*, Esq; coroners of our Sovereign Lord the King, for the county aforesaid, the said *A.* is outlawed.

## The ANSWER of

*John Wilkes*, Esq; }  
and

*Frederic Bull*, Esq. }

Sheriff.

Return of  
the procla-  
mation.

By virtue of the within writ to me directed, I caused the within named *A.* to be proclaimed three several days, according to the effect of the within-mentioned statute, as it is within commanded me.

## The ANSWER of

*John Wilkes*, Esq; }  
and

*Frederic Bull*, Esq. }

Sheriff.

Special esp.  
telegatum.

*GEORGE* the Third, &c. To the sheriff of *Middlesex*, Greeting: WE command you, that

that you fail not on account of any liberty within your county, but that by the oath of good and lawful men of your county, you diligently inquire what goods and chattels, lands and tenements, *A. B.* late of the parish of *St. Clement Danes*, in your county, taylor, hath or had in your bailiwick, on the \_\_\_\_\_ day of \_\_\_\_\_

last past, or at any time afterwards, on which day he was outlawed in your county, at the suit of *C. D.* in a certain plea of trespass on the case, to the damage of the said *C.* of two hundred pounds, as you have returned to us some time since, and by their oath cause the same to be extended and appraised according to the true value thereof: And whatever you find by that inquiry, take into your hands and keep safe, so that you answer to us the value and issue thereof; and having so extended and appraised the same, what you shall have done therein make known unto us, on *thereturn*) where-soever we shall then be in *England*, distinctly and plainly under your seal, and the seals of those by whose oath you shall have made the extent and appraisement: And for that the said *A. B.* conceals himself, and runs up and down from place to place in your county, in contempt of us, and in prejudice to our crown, as we are informed: **WE COMMAND** you also, that you take the said *A. B.* where-soever he shall be found in your bailiwick, as well within a liberty as without, and keep him safe, so that you may have him before us at the aforesaid time, to do and to receive what our court of the bench shall in this case determine; and have there this writ. Witness, Sir *William De Grey*, Knight, *Westminster*, the first day of *June*, in the twelfth year of our reign.

C c

Indorse

**The Modern Practice of the**  
**Indorse attorney's name, day, month, and**  
**year when sued out.**

Return of  
 special cap.  
 outlegatum.

BY virtue of this writ to me directed, I have taken the body of the within-named *A. B.* whose body I kept in my safe custody until afterwards, to wit, on the 19th day of *June*, in the twelfth year of his now Majesty's reign, on which day I received his Majesty's writ of *habeas corpus cum causa*, to me directed; by virtue of which writ, immediately after the receipt thereof, to wit, on the 20th day of *June*, I did conduct the body of the said *A. B.* before Sir *George Nares*, Knight, one of the Judges of the court of our Lord the King, of the bench, according to the command of the said writ, which said Judge did then receive from me the body of the said *A. B.* and did commit him to the custody of the warden of the *Fleet* of our Lord the King, and did then discharge me from the further keeping of the said *A. B.* and therefore I cannot have the body of the said *A. B.* before our Lord the King's justices, on the day within-mentioned, wheresoever our said Lord the King shall then be in *England*, as by the said writ I am commanded. The further execution of this writ appears in the inquisition and inventory hereunto annexed.

The A N S W E R of

*John Wilkes, Esq;* }  
 and } Sheriff.  
*Frederic Bull, Esq.* }

The inquisition.

*Middlesex*, An inquisition indented, taken at the *Three Tuns* in *Brook Street*, near *Holborn*, in the county aforesaid, the day of \_\_\_\_\_ in the twelfth year of the reign of our Sovereign Lord *George the Third*,



Third, by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, &c. before me *John Wilkes, Esq;* and *Frederic Bull, Esq;* sheriff of the county aforesaid, by virtue of the King's writ to me directed, and to the inquisition annexed, on the oath of *Thomas Smith, James Greathead, John Coote, Robert Freeland, William Ward, Peter Davis, George Hussy, Samuel Wright, David Gilbert, Richard Hogg, John Price, and Stephen Worlidge,* good and lawful men of my bailiwick, who being sworn and charged to inquire of all such matters and things as in the said writ are mentioned and contained, on their oaths do say, That *A. B.* in the said writ named, on the day of \_\_\_\_\_ last, on which day he became outlawed, was, and on the day of taking this inquisition, is possessed as of his own proper goods and chattels, of and in the several goods and chattels particularly mentioned and expressed in the schedule or inventory thereof hereunto annexed, which said goods and chattels are worth, to be sold, the sum of eighty-seven pounds thirteen shillings. All which said goods and chattels, I the said sheriff, by virtue of the said writ, on the day of taking this inquisition, have seized and taken into his Majesty's hands, according to the command of the said writ: And the jurors aforesaid, on their said oaths further say, That the said *A. B.* on the said \_\_\_\_\_ day of \_\_\_\_\_ or at any time since, had not any lands or tenements, or on the day of taking this inquisition, hath any other goods or chattels in my bailiwick, which can be seized or taken into his Majesty's hands, according to the command of the said writ. In witness whereof, as well I the said sheriff, as the said jurors, have to this inquisition set our seals the day, year, and place first above mentioned.

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Sheriff annexes to the above inquisition a  
complete schedule of the effects seized.**

Venditioni  
expens.

**GEORGE** the Third, by the grace of God,  
of Great Britain, France, and Ireland King,  
defender of the faith, &c. To the sheriff of  
*Middlesex*, Greeting: WHEREAS by a certain  
inquisition indented, taken at the *Three Tuns* in  
*Brook Street*, near *Holborn*, in the said county,  
the                      day of                      last,  
before you *John Wilkes*, Esq; and *Frederic  
Bull*, Esq; sheriff of our said county, by virtue  
of our writ of *capias ut legatum*, under the seal of  
the court of our Lord the King, of the bench,  
at *Westminster*, to you the said sheriff di-  
rected, whereby we commanded you to in-  
quire what goods and chattels, lands and tene-  
ments, *A. B.* late of the parish of *St. Clement  
Danes*, in the county of *Middlesex*, taylor, had  
within your bailiwick, on the  
day of                      last past, or at any  
time afterwards, on which day he was outlawed  
in the said county, at the suit of *C. D.* in a plea  
of trespass on the case, (or as original action may  
be) it was found by the oath of *Thomas Smith*,  
and other good and lawful men of the said  
county, that *A. B.* in the said writ named, on  
the                      day of                      last,  
on which day he became outlawed, and on the  
day of taking the said inquisition, was possessed  
as of his own proper goods and chattels, of and  
in the several goods and chattels particularly  
mentioned and expressed in the schedule or in-  
ventory thereof hereunto annexed, which said  
goods and chattels were worth, to be sold, the  
sum of 87 l. 13 s. all which said goods and chat-  
tels, you the said sheriff, by virtue of our said  
writ, on the day of taking the said inquisition,  
did seize and take into our hands, as by the said  
writ and inquisition taken thereupon, transcribed  
into our court of *Exchequer*, and there remain-  
ing

Note,  
of  
C

ing in the custody of our remembrancer, more fully appears. And being desirous to be satisfied of the value of the said goods and chattels in the said inquisition mentioned, as is just, command you that you sell, or cause to be sold, the said goods and chattels, and every part thereof, for the best price that can be got for the same, and at the least, for the said sum of 87 l. 13 s. at which they were appraised as aforesaid, so that you have the sum of money arising by such sale before the Barons of our *Exchequer*, at *Westminster*, on the                      day of instant, then and there to be paid in for our use, and that you make then and there distinctly and clearly appear to our said Barons, all that you shall do concerning the premises; and have you then there this writ. Witness, Sir *Thomas Parker*, Knight, at *Westminster*, &c.

*Masbam.*

BY virtue of this writ to me directed, I have Sheriff's re-caused the goods and chattels in the schedule turn. or inventory hereunto annexed mentioned, to be sold for the sum of                      l. being the best price I could get for the same, which monies I have before the Barons of the King's *Exchequer* at *Westminster*, on the day within mentioned, ready to pay to his Majesty's use, according to the command thereof.

The ANSWER of

*John Wilkes*, Esq; }  
and } Sheriff.  
*Frederic Bull*, Esq. }

Note,—For the further proceedings on the process of outlawry in the Court of *Exchequer*, vide the *Complete Practice of the K. B.* page 288.



Observation.

On the special CAPIAS UTLEGATUM if any goods are taken, and defendant does not put in bail, you must proceed to get satisfaction out of the goods in manner following:

Get sheriff to take inquisition pursuant to writ. It is most prudent to give defendant notice of executing same, as you do on inquiry. Get writ returned by sheriff, and inquisition transcribed by filacer, into the Exchequer. When there, employ clerk in King's Remembrancer's Office, who will procure you a writ of *venditioni exponas*, on which sheriff will sell goods. Then you proceed to petition Lords of Treasury, that money levied may be paid to plaintiff. Petition being referred by them to their solicitor, you attend him with the *venditioni exponas* returned by sheriff; and also with an affidavit of plaintiff's debt and charges, &c. If he reports in your favour, one of the Treasury clerks procures you a warrant for attorney general to consent on moving the Exchequer.

Note.

If goods taken on the *cap. ul.* do not amount to 50*l.* or 60*l.* they will not bear the charge of proceeding against them.

If the sum levied does not exceed 20*l.* no application to the treasury necessary. The court of *Exchequer*, on motion, will order the money levied to be paid to the plaintiff.

### The METHOD of reversing Outlawry.

If defendant apprehends such a procedure, or has notice of an exigent issued against him, he must apply to the sheriff office, and get a short note of writ, which he must carry to filacer, who, on defendant's attorney's entering appearance with him, or putting in bail, according to the nature of the case, will make out *superfedeas*, which

which must be carried to sheriff, who allows same.

This must be done before exigent is returnable, or defendant is too late to do same, without paying the costs incurred on outlawry.

The expence of procuring *superfedeas* is as follows:

|                            |   |   |   |       |   |    |
|----------------------------|---|---|---|-------|---|----|
| Appearance,                | - | - | - | 0     | 2 | 0  |
| Superfedeas,               | - | - | - | 0     | 3 | 0  |
| Duty,                      | - | - | - | 0     | 2 | 0  |
| Sealing,                   | - | - | - | 0     | 0 | 7  |
| Sheriff for allowing same. | - | - | - | 0     | 2 | 4  |
|                            |   |   |   | <hr/> |   |    |
|                            |   |   |   | 0     | 9 | 11 |

GEORGE the Third, &c. To the sheriff of *Middlesex*, Greeting: WHEREAS by our writ of *superfedeas*.

writ we have lately commanded you, that you should cause *A. B.* late of the parish of *St. Clement Danes*, in the county of *Middlesex*, taylor, to be demanded from county court to county court, until, according to the law and custom of our kingdom of *England*, he be outlawed, if he did not appear; and if he appeared, then that you should take him and keep him safe, so that you might have him before our justices of the bench, at *Westminster*, on (the return) wheresoever, &c. to answer to *C. D.* of a certain plea of trespass on the case, to the damage of the said *C.* of l. as is said. NOW forasmuch as the said *A.* before the issuing our said writ of *Exigent*, appeared in our court, of the bench, at *Westminster*, by *T. G.* his attorney, and often offered to answer the said *C.* of the plea aforesaid, our said writ did not duly issue, WE therefore command you, that you forbear all further demanding the said *C.* or outlawing, taking, or any way molesting him on that occasion; and have there this writ. Witness, Sir *William De Grey*, Knight, at *Westminster*, &c.  
*Superfedeas*

Practical remarks.

*Superfedeas* to *Exigent* must be delivered to sheriff before return of *Exigent*, or defendant may be outlawed.

Defendant may render himself before return of *Exigent*.

No outlawry can be reversed after death of plaintiff, without defendant's putting in bail, if original action requires it. Rule, *Trin. 2. Jac. 2. C. B.*

Defendant on appearing to reverse outlawry, must pay plaintiff all costs to *Exigent*. The further costs respited till judgment. *Ibid.*

Where goods taken on *capias uslegatum*, if defendant brings *superfedeas* to reverse outlawry, he must pay the costs incurred, before he can get certificates from clerk of the outlawries. *Ibid.*

Plaintiff cannot be nonprossed after outlawry reversed.

Bail must be put in to reverse outlawry, where original action required special bail. Rule, *Hil. 15 & 16 Car. 2. & Trin. 2. Jac. 2. C. B.*

Bail put in by defendant to reverse outlawry, cannot render principal; he or they must pay the money, if he is condemned in the action.

The process of outlawry is not within stat. 12 Geo. 1. *MSS. Cases, C. B.*

Defendant hath till the *quarto die post* to appear to *Exigent*.

If a person outlaws a defendant when a prisoner, he can have no costs, and must reverse same at his own expence.

After outlawry reversed, plaintiff must declare against defendant in two terms, or on a four-day rule given by defendant, plaintiff must pay costs. Rule, *Trin. 33. Car. 2.*

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*The METHOD of suing a Person to  
an Outlawry after Judgment.*

If a person lurks so that you cannot levy execution, or take his body, sue out a *ca. sa.* into county where original action brought; get same returned by sheriff *non est inventus*. Then carry writ so returned to *Exigent* of same county, who will make you out writ of *Exigent*, which you deliver to under sheriff to be returned; when returned, clerk of the outlawries will make out a *capias utlegatum* general or special, into as many counties as you please. If defendant is taken, he cannot be discharged without making satisfaction to plaintiff, or by pardon of outlawry, or reversing it for sufficient error.

A person cannot be outlawed before or after judgment, where the proceedings are by a common *clausum fregit*, and not by original writ, nor after a writ of error brought by defendant.

**PROCEEDINGS on DISTRESS and  
REPLEVIN.**

**D I S T R E S S.**

The landlord, or owner of premisses, may Observation.  
distrain the goods, &c. himself, but if he employs another so to do, he must give him a warrant or authority in writing, or he will not be justified in making a distress.

To Mr. *I. K.* my bailiff, Greeting. Warrant of  
DISTRAIN the goods and chattels of *A. B.* distress.  
in the house he now dwells in, situate in  
in

in the county of  
for l. being  
two years rent, (*or as the case is*) due to me for  
the same at *Michaelmas* day last; and for your so  
doing, this shall be your sufficient warrant and  
authority. Dated                      day of *August*,  
1772.

L. F.

Words of  
distress.

I *J. K.* as bailiff to Mr. *J. F.* do distrain  
this (*the first chattel you lay your hands on when in  
the house*) in the name of all the goods and chat-  
tels in this house, for and towards satisfaction  
and payment of the sum of                      l. being two  
years rent, at                      l. *per ann.* due to the said Mr.  
*J. F.* at *Michaelmas* day last.

You then proceed to take an inventory of so  
much of the goods as you judge will be sufficient  
to cover the rent and charges of distress.

Form of in-  
ventory.

AN INVENTORY of the goods and chat-  
tels distrained by me *J. K.* bailiff to Mr. *J. F.*  
in the dwelling house of *A. B.* situate at  
in the county of                      this  
day of *August*, 1772, being for two years rent  
due at *Michaelmas* day last, and as yet in arrear  
and unpaid. *Imprimis, (berein insert goods dis-*  
*trained).*

Notice to be  
wrote at bot-  
tom of in-  
ventory.

THESE are to give you notice, That as bailiff  
to Mr. *J. F.* I have distrained the goods and  
chattels mentioned in this inventory, for the  
sum of                      l. being for two years rent due at  
*Michaelmas* day last, for the premisses above  
mentioned, and that unless the said arrears of  
rent and charges of distress be paid, or the  
goods be replevied in due time, the same will  
be appraised and sold according to law.

Yours, &c. *J. K.*

A true

A true copy of this inventory and notice must be left with the tenant, or some of his servants, if there is any person in the house, or fastened on the door, or put into the key-hole, or left in some notorious place of the house, if nobody therein. It is proper to have a person with you, when you make a distress, to examine the inventory, and to be a witness to the transaction, if called on for that purpose.

The safest way is to remove the goods immediately, and in your notice to acquaint tenant where they are removed; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are intitled to sell them by law, which is on the seventh day, because the statute says, You are to give five days notice, and it is held and understood to be five whole days, which must be exclusive of the day distress made.

If the tenant wants further time to raise the money, and landlord chuses to give him such indulgence, he must take a memorandum from tenant, that possession is continued at his request, and by his desire, or landlord would be a trespasser in continuing same beyond the time limited by the statute, and liable to an action for so doing.

On the seventh day, you should search the sheriff's office to see if the goods are replevied; if not, go to the premises, and if tenant is there, or any body on his behalf, demand the rent and charges of distress. If he does not pay the same, send for a constable and two sworn appraisers; let them see the goods taken in distress, and then the appraisers must be sworn by the constable, by laying both their hands upon a Bible having the New Testament in it. The common way is for the appraisers to buy the goods at their own valuation, and a receipt at the bottom of the inventory, witnessed by



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by the constable, is considered as a sufficient discharge; but if the goods taken in distress are of great value, let there be a proper bargain and sale between the landlord, the constable, the appraisers, and the purchaser, for the better proving the transaction afterwards, if there should be occasion. The constable must administer to the appraisers the following oath:

Appraiser's  
oath.

You and either of you shall make a true appraisement of the goods now shewn to you, and mentioned and contained in this inventory, (*the constable having at the same time the inventory in his hand, and shewing it to them*) according to the best of your judgment. So help you God.

Memorandum to be  
indorsed on  
inventory.

MEMORANDUM, That on the day of *August, 1772*, *E. F.* of, *Essex*, and *I. G.* of, *Essex*, two sworn appraisers, were sworn upon the Holy Evangelists by me *L. M.* of, *Essex*, constable, to make a true appraisement of the goods mentioned in this inventory, according to the best of their judgment. Witness my hand,

*L. M.* constable.

PRESENT at the time of  
swearing, the said *E. F.*  
and *I. G.* as above, and  
Witnesses thereto, *O. P.*  
*K. I.*

After the appraisers are sworn, and have viewed and valued the goods, indorse the following memorandum on the inventory for the appraisers to sign.

Appraisers  
valuation.

We the above-named *E. F.* and *I. G.* being sworn upon the Holy Evangelists, by *L. M.* the constable above-named, to make a true appraisement of the goods mentioned in the above inventory, according to the best of our judgment,  
and

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and having viewed the said goods, DO adjudge and value the same at the sum of **1. l.** and no more. As witness our hands, this day of *August*, 1772.

**B. F.**  
**I. G.**

After the goods are sold for the best price you can get for the same, you must deduct the arrears of rent and all reasonable charges, and the overplus (if any) must be paid or applied to the tenant's use.

**Mr. C. D.**

I hereby desire you will keep possession of my goods which you have this day distrained for rent due from me to you in the place where they now are, being in (*premises where distress made, describing same*) and I will pay the man for keeping the said possession. As witness my hand this 4th *December* 1771.

Memorandum when possession is continued over the five days at request of tenant.

**A. B.**

If sheriff is in possession of the goods of a tenant, landlord need not make a distress, but should forthwith serve sheriff with the following notice :

TO *John Wilkes, Esq;*  
and *Frederick Bull,* } Sheriff of *Middlesex.*  
*Esq;*

Take notice, that there is now due from **A. B.** Notice to the person to whom the goods belong you are sheriff.  
now in possession of, by virtue of his Majesty's writ of *feri fac.* returnable (*the return*) the sum of **1. l.** for one year's rent due to me at *Ladyday* last. As witness my hand, this day of **1772.** **C. D.**

*Landlord of the said premises.*

**D d**

**Books**

Practical re-  
marks.

Books of a scholar, an anvil in a smith's shop, and a mill stone that is severed for picking, &c. fish in a pond, and poultry, tools of trade, cattle of the plough, if sufficient distress without, a garment or cloth in a taylor or weaver's shop, sacks of corn or meal in a mill or market, corn growing on ground, a horse in a smith's shop or inn, are not distrainable; nor is any thing on which replevin will not lie, the doctrine of distress being, that all things repleviable are liable to distress.

If goods taken in execution, landlord is intitled to a year's rent and no more. *Stat. 8 Ann.*

The executor or administrator of a landlord hath the same right under the equity of the 8 *Ann.* it being an interest vested. *Fortesc. Rep. 360. Strange 214.*

The ground landlord is not within the meaning of the stat. 8 *Ann.* 2 *Strange 787.*

Where land let for a year, and afterwards at will, for less rent than before, and both rents made payable half yearly; if at the end of the first half year, under the last demise an execution comes, the landlord is intitled only to the two last half year's rent. *Andr. 218.*

If land let for a year, and then part thereof at will, if execution comes, the landlord is not intitled to any part of the first year's rent. *Andr. 219.*

There is a proviso in *Stat. 8 Ann.* that same does not extend to the King; so that landlords on extents, outlawries, &c. are excluded from their rent, when on execution at the suit of the King. *MSS. Cases, C. B.*

Living things distrained must be put in a pound *ouert*, that tenant may feed them; landlord may put them in a pound *covert*, but then he must keep them at his peril, without being able to recover such expence from tenant. *1 Inst. 47. b. 2 Inst. 106.*

Goods that may receive damage from the weather, must be put where they will be secure therefrom;



therefrom; if damaged, landlord is answerable.  
*Ibid.*

Distress of cattle or goods not to be taken or driven out of the county where distress made, nor above three miles from the place where taken. Goods distrained at one time, shall not be impounded in several places, so that owner be forced to sue several replevins, under forfeiture of 5 l. to party aggrieved, and treble damages. Pound keeper not to take for poundage above 4 d. under forfeiture of 5 l. and the money above the 4 d. *Stat. Marl. & Westm. 1. 1 & 2 P. & M.*

A cow distrained cannot be milked by the distrainor; if she perish for want thereof, he may distrain again. *2 Leon. 174.*

The distrainor cannot work a distress of live cattle, because he hath no property therein, nor possession *in jure*, the law gives it him only as a pledge or security. *Dyer 280.*

A landlord may enter the house of his tenant to distrain, if the door be open; but if barred, he must not break it open to make his distress. *Stat. 38 Hen. 6. Fitz. Distress 21.*

A landlord making an excessive distress, is to be grievously amerced. *Stat. 52 Hen. 3. 1 Vent. 104.*

A horse bringing goods to market, goods brought to market to be sold, goods on a wharf or warehouse for exportation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, and wool in a neighbour's barn, are goods of a third person, which cannot be distrained by a landlord for rent, tho' found on his premises.

Goods left at an inn, or other place, a chariot standing in a coach-house belonging to a common livery stable, being parcel of and rented with said livery stable, may be distrained by the landlord for rent in arrear, tho' the property

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 party of a third person; so may goods or house-  
 hold furniture of a lodger or inmate.

## R E P L E V I N.

When a person hath distrained on another for rent which is not due, or which hath been satisfied by the distrained, in an account between him and his landlord, or otherwise; the only method the law allows the party injured for redress is to replevy the goods, and thereby bring the procedure before a court and jury to determine the legality of such distress.

The party distrained on, must, within the time allowed by the statute to replevy, take two house-keepers living in the city or county where distress made, to the sheriff's office of such city or county, and enter into a bond to prosecute his suit (*so commence by entering into the said bond*) against the distrainor, with effect.

Form of a  
 bond in re-  
 plevin, by  
 stat. 11 Geo.  
 2.

Know all men by these presents, That we  
*A. B. of London*, in the county of *Suffex*, gent.  
*G. D. of the same town and county*, yeoman,  
 and *E. F. of East-Grinstead*, in the said county,  
 inholder, are held and firmly bound to *G. H.*  
 Esq; sheriff of the county aforesaid, in the sum  
 of 100 l. of lawful money of Great Britain, to  
 be paid by the said *A. B.* or his certain attorney,  
 executors, administrators, or assigns; for which  
 payment to be well and truly made, we bind  
 ourselves, and each of us binds himself for the  
 whole, and in gross, our heirs, executors, and  
 administrators, firmly by these presents. Sealed  
 with our seals, the                    day of                    1772,  
 and in the 12th year of the reign of our Lord  
 George the Third, by the grace of God, of Great  
 Britain, France, and Ireland, King, defender  
 of the faith, &c.

The

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The condition of this obligation is such, Condition.  
that if the above-bounden *A. B.* do appear at  
my next county court, to be holden for the  
county of *Sussex*, at the town of *Lewes*, on  
the                      day of                      next,  
and do prosecute there with effect, his suit  
which he hath commenced against *H. H.* for the  
taking and unjustly detaining of the goods and  
cattle following belonging to the said *C.* that  
is to say, three two-years old steers, three two-  
years old heifers, and one heifer yearling, (or  
as case may be) the goods of him the said *A. B.*  
and to make return of the said goods, if the re-  
turn of the same shall be adjudged; that then  
this present obligation shall be void and of none  
effect. Sealed, &c.

This bond is assignable in four days exclusive,  
after the time limited therein for the obligor to  
prosecute his suit; and if it is not complied  
with, the distrainor, on applying to sheriff may  
have an assignment. The sheriff charges the same  
for the assignment, as on any other bail-bond;  
and the same steps must be taken to complete  
bond, as is usual on bail-bonds before suit com-  
menced thereon against principal and bail. The  
proceedings on the replevin bond are the same  
as on common bail-bond, *mutatis mutandis*.

KNOW ALL MEN *by these presents*, That  
I *G. H.* Esquire, sheriff of the county of  
have, at the request of the above-named *H. H.*  
the avowant in this cause, assigned over unto  
him the said *H. H.* this replevin bond, pursuant  
to the act of parliament in that case made and  
provided; **IN WITNESS** whereof, I have  
hereunto set my hand and seal of office, this  
day of                      1772.

Form of as-  
signment of  
replevin  
bond.

Sealed, &c.

*G. H.*



D d 3

Michael-



*Michaelmas Term*, in the 11th year of the reign of King George the Third.

*Dickins.*

Declaration  
in replevin.

*Suffex*, to wit, *A. B.* Esq; late of *Lewes* in the county aforesaid, was summoned to answer *C. D.* of a plea, wherefore he took the cattle of the said *A.* and unjustly detained the same against pledges and sureties, and so forth: And whereupon the said *C.* by *T. C.* his attorney, complains that the said *A.* on the seventeenth day of *April*, in the year of our Lord one thousand seven hundred and seventy-one at *Lewes* aforesaid, in the county aforesaid, in certain places there called *Heifers-Mill Meadow* and *Waterleat Meadow*, took the said cattle, (that is to say) three two-year old steers, three two-year old heifers, and one heifer yearling, of the said *C.* and unjustly detained the same against pledges and sureties until, and so forth: Wherefore the said *C.* saith, that he is injured, and hath damage to the value of thirty pounds. And thereof he brings suit, and so forth.

*Hilary Term*, in the 11th year of the reign of King George the Third.

*Manwaring.*

Affidavit.

AND the said *A.* by *C. B.* his attorney, comes and defends the wrong and injury, when, &c. and as bailiff of one *J. K.* Esq; well acknowledges the taking of the said cattle, in the said places called *Heifers-Mill Meadow*, and *Waterleat Meadow*, and justly, &c. because he says, that

that the said places called *Heifers-Mill Meadow*, and *Waterleat Meadow*, are and at the said time when, &c. were the soil and freehold of the said J. and because the said cattle, at the said time, when, &c. were in the said places called *Heifers-Mill Meadow*, and *Waterleat Meadow*, eating grass there growing, and doing damage there, the said A. as bailiff of the said J. well acknowledges the taking of the said cattle there so doing damage, and justly, &c.

J. Burland.

As *replevin* is *vicontiel* and determinable in the inferior court where the suitors are judges both of the law and the fact, the law hath appointed two writs to remove such causes out of inferior courts to superior, viz. The *pone* and *recordari*. Observations.

The *pone* is used when the proceedings are by writ of *replevin*, for that writ gives the superior court authority to proceed in such suit or plaint, whether the proceedings below are recorded or not, as the superior court wants no record from below, when they have the King's writ with them.

The *recordari* is a writ to record the proceedings, and when recorded, to return same into the King's Bench, or Common Pleas, as the case may be. It gives inferior courts authority to record proceedings that were not of record before; and if *replevin* was by plaint, it must be removed by *recordari*, because the court must have their authority by proceedings returned to them of record.

A plaintiff in *replevin* may remove writ of *replevin* or plaint out of an inferior court, either by *pone* or *recordari*, without shewing any cause for such removal, as it is an act in his own delay; but a defendant in *replevin* cannot, without

out shewing a sufficient cause, which must appear upon record.

There are several causes of removal at common law; when removed, the cause is inserted in writ after the *resse*.

If plaint be removed by defendant by *pone* at the day in baidk, the plaintiff shall be demanded under peril of a nonsuit; and if he makes default, a return is to be awarded to the said writ, but no process against him. If plaintiff appears, and defendant makes default, a *distingas* shall issue against him, and on same being returned *nulla bona*, then a *capias* and process of outlawry. If plaint be removed by plaintiff by *pone* or *recordari*, if he makes default, he shall be nonsuited, but if defendant makes default, then shall issue against him a *pone per vadios*, and so process of outlawry. *Gillb. L. R.*

Writ of  
*pone*.

**GEORGE** the Third, &c. To the sheriffs of *London*, greeting: Put by upon the petition of the petitioner, on (*the return*) wheresoever we shall then be in *England*, the plaint which is in your county, by our writ between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as is said, and summons by good summoners, the aforesaid *C.* that he be then there to answer the aforesaid *A.* hereof; and have there the summoners and this writ. Witness, &c.

Writ of re-  
*cordari*.

**GEORGE** the Third, &c. To the sheriff of *Suffex*, Greeting: WE command you, that you cause to be recorded in your full county, the plaint which is in the same county, without our writ, between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as is said, and have the record before

our



our justices at Westminster, (the return, where-  
 server, &c. under your seal, and the seals of four  
 lawful suitors of the same county, with those who  
 were present at the recording it, and fix the same  
 day to the parties that then they may be there and  
 proceed in that plaint according to justice, and have  
 there the names of the said four suitors, and this  
 writ). Witness, &c. (Let this writ be executed,  
 if the aforesaid A. petitions for it, and otherwise  
 not).

These writs issue out of Chancery, and are  
 made out by the proper curfitor of the county,  
 on leaving him a *precipe* for that purpose.

If plaintiff in *replevin* hath judgment on ver- Of judg-  
 dict, the jury assess the damages as in a common ments in re-  
 action; if on a demurrer, he must sign an inter- plevin.  
 locutory judgment, and execute an inquiry be-  
 fore he can sign final judgment, or take out exe-  
 cution.

If the avowant or defendant hath judgment  
 on verdict, damages are assessed as aforesaid;  
 if on demurrer, or on *non pros*, an inquiry must  
 be executed to obtain such judgment.

If in *replevin* plaintiff is nonsuited, he cannot  
 have a new *replevin*, but must be relieved by the  
*writ of second deliverance*.

If plaintiff does not prevail in this writ, the  
*retorno habendo* is awarded for the avowant irre-  
 plevisable; that is, that avowant shall detain  
 and keep the things taken, till the rent, or  
 other duty for which they were taken, is paid;  
 nor shall plaintiff ever again disturb defendant's  
 possession by *replevin*, or *writ of second deliv-  
 erance*, though if plaintiff tenders the rent, de-  
 fendant must restore the goods, &c. or plaintiff  
 may recover same by action of *detinue*.

The writ of *second deliverance* is a *superseas*  
 in law to the sheriff against the writ of *retorno  
 habendo*, and to prevent his executing same. If  
 it

it comes to him, after return made, it is in the nature of a new *replevin*.

If defendant in *replevin* cannot get the goods, &c. of plaintiff on the writ of *retorno habendo*, and sheriff returns same *elongata*, defendant must sue out *scire facias* to summons the bail, which brings them into court, to shew cause why defendant should not have a return of their goods, &c. and if no cause shewn by them, he hath a writ to have return of their goods, &c. instead of plaintiff's; and if their goods, &c. prove insufficient, and sheriff returns a *nihil* on this writ, defendant may have a *scire facias* against the goods, &c. of the sheriff.

The defendant hath another remedy against plaintiff, where sheriff returns *elongata* on the writ *de retorno habendo*, viz. a *capias in wiber-nam* against plaintiff's goods, &c.

By stat. 17 Car. 2. it is enacted, That where a plaintiff in *replevin* shall be nonsuited before issue joined, or judgment on demurrer for the avowant in any court of record, defendant making a suggestion thereof in nature of an avowry for such rent, &c. that court may be ascertained of the cause of the distress; court on his prayer shall award a writ, &c. to inquire of the sum in arrear at the time of making the distress, and the value of the goods, &c. taken, and on return of the inquisition, the defendant shall have judgment to recover against plaintiff the arrears of rent, in case the goods, &c. taken amount to same, or so much as the value of the said goods, &c. amount to, and full costs of suit, and shall have execution thereon by *fiery facias*, *elegit*, or otherwise.

#### Recaption.

The writ of *recaption* lies where defendant distrains again on plaintiff for the same rent, and if he is convicted thereof, he shall be fined to the King.

On

On the writ of recaption, defendant cannot avow as in *replevin*, because avowry is to have return of the pledges; but defendant must justify as in trespass, and unless he can support such second taking, he will be deemed a trespasser.

On the recaption, the tenant in his declaration must aver that the second distress was taken for the same cause as the first, or he fails in making out his title to the said writ, and consequently cannot punish the landlord for such second distress.

Note,—For further proceedings in *REPLEVIN*, see the Complete Practice in K. B. page 305.

If defendant be without addition in plaint, he can have none in *recordari*, yet he may be outlawed. 2 H. 5. Practical remarks.

Plaintiff in *replevin* may declare without rule from defendant to force him so to do. If defendant does not appear, the way to compel appearance is by attachment.

On cause being removed out of county court, plaintiff must declare *de novo*. C. J. Gilb. Law of Replevins, p. 147.

The general issue in *replevin* is *non cepit*, but the caption and detention only is in issue by this plea, and not the property. C. J. Gilb. Law of Replevins.

If *pone* is taken out by defendant with a summons, plaintiff is demandable on peril of a nonsuit, and so he is where a day is given defendant. F. N. B. et Stat. 21. H. 6.

*Capias* lies against defendant on his default to appear on a *pone* brought by plaintiff in *replevin* by plaint, but not on a *justicies*. Stat. 21. H. 6.

A record can only be moved out of a court of record by *habeas cum causa*, or *certiorari*. Stat. 9 H. 6.

Scire



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*Scire facias* the proper process to bring in the pledges in *replevin*, need not be returned to in-title party to a *capias in withernam*. 5 H. 5. *Fitz. Abr.* title *process*, p. 115.

Sheriff may break open a house to execute a *replevin*, if denied entrance. 2 *Inst.* 193. 1 *West. c.* 17.

If plaintiff be nonsuited, or a verdict against him, the writ of *retorno habendo* may be brought by defendant; and if sheriff levies goods on a *withernam*, and wont deliver same to defendant, an action lies against him. *Fitz. Abr.* title *Gage Deliv.* p. 8.

A second deliverance was denied in the case of a nonsuit for rent. *Ventr.* 64.

*Replevin* is not an action or plaint within stat. 8 & 9 *Will.* 3. *MSS. Cases, C. B.*

Where in *replevin*, the place is material. *Strange* 507.

No *replevin* of goods taken upon a conviction. *Strange* 1084.

## EJECTMENT

Observations.

Is an action brought by the lessee of a term of years to recover such term, when he is ousted thereof. It is now generally used to recover the possession of lands, and supplies the place of many real actions.

The method of bringing this action is to feign a lease and an ejector, and to draw a declaration against such feigned ejector; a copy of which declaration must be delivered to the tenant or tenants in possession of the premises intended to be recovered, with a notice at bottom thereof for him or them to appear and defend his or their title to such premises; or else that the ejector will suffer judgment to be signed against him by default, whereby the tenant in possession

possession will be turned out of the premises he holds.

On such declaration being delivered in manner aforesaid, it is the duty of the tenant or landlord, if he means to defend his possession or title to the said premises, to enter into a rule of court to become defendant to such action in ejectment, in the room of the casual ejector, or nominal defendant, and to confess the lease, entry, and ouster at the trial thereof, and insist on his title only.

The service of a declaration in ejectment before this statute, might have been on the tenant<sup>2</sup> himself, or his wife, &c. but now such service is not good, unless tenant himself acknowledges the receipt after it is delivered to plaintiff's attorney, or the person who delivers same must make oath that he delivered it to tenant in possession, or that the tenant in possession acknowledges the receipt of a true copy of the annexed declaration, with the notice thereon, which deponent did then read to the said tenant, and acquainted him with the contents thereof. The affidavit must be positive, that the person that declaration was delivered to was tenant in possession, or that he acknowledged himself so to be.

On the ground of this affidavit, plaintiff moves for a rule for judgment against the casual ejector, which is granted, and judgment in consequence, unless the real defendant in due time enters into the common rule.

The notice to the declaration, if the premises lie in *London* or *Middlesex*, must be made to appear the first day of the subsequent term, and must be delivered before the essoign day of such term; for if made generally, defendant will have the whole term to appear in. If the premises in question lie in any other city or county than *London* or *Middlesex*, you make the notice

When to appear when premises lie in *London* or *Middlesex*.

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to appear the next term generally. Rule, *Trin.*  
32 Car. 2. C. B.

When in  
any other  
city or coun-  
ty than Lon-  
don or Mid-  
dlesex.

If premisses lie in any other city or county than *London* or *Middlesex*, though declaration delivered before the essoign day of *Easter* or *Michaelmas* term, yet tenant has four days after the end of the next issuable term, *Hilary* or *Trinity*, to appear; and if in a county where assizes but once a year, tenant has four days after the end of the term next preceding the assizes to appear.

If houses or lands, for which ejectment brought, are empty, so that declaration cannot be delivered, or an affidavit made, so as to enable court to grant judgment against the casual ejector, plaintiff must seal a lease on the premisses, and give rules to plead; and when out, he must make an affidavit of the whole matter, on which court grants judgment against the casual ejector.

If a tenant in possession keeps his door shut, so that he cannot be served with declaration in ejectment, on making this matter appear to court by affidavit, they will grant judgment against the casual ejector. *Nisi*, &c.

When a corporation is lessor of the plaintiff, they must give a letter of attorney to some person to enter and seal a lease on the land, which lease must try their title, and then their attorney may proceed in the common method.

Lease in  
ejectment  
where pre-  
misses unin-  
habited, to  
recover pos-  
session.

THIS INDENTURE, made the 20th day of *May*, in the 10th year of the reign of our Sovereign Lord *George* the Third, by the grace of God, King of *Great Britain*, *France*, and *Ireland*, defender of the faith, &c. and in the year of our Lord 1770, BETWEEN *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part, WITNESSETH, That he the said *A. B.* for divers good causes and considerations



him thereunto moving, hath demised, granted, and to farm letten; and by these presents, doth demise, grant, and to farm let unto the said C. D. ALL that messuage or tenement, commonly called or known by the name or sign of the *Bull Head*, situate, lying, and being in the city of *London*, and late in the possession of one E. F. To have and to hold the said messuage or tenement, and premises, with the appurtenances, from the date of these presents for and until the full end and term of five years from thence next ensuing, and fully to be complete and ended: PROVIDED ALWAYS, and upon condition, That if the said A. B. his executors or administrators, shall, at any time after the 30th day of this present *May*, tender to the said C. D. his executors or administrators one shilling, then this present indenture, and every thing therein contained, shall be void and of none effect, (any thing herein contained to the contrary in anywise notwithstanding). IN WITNESS, &c.

As declaration is usually delivered in vacation to appear in subsequent term, title must be of preceding term. The demise must be laid any day after rent, &c. due, and before declaration delivered, except a *Sunday*; notice to appear must be on the first day of subsequent term.

Directions  
for filling up  
declaration  
in eject-  
ment.

Hilary Term, in the 12th year of King  
George the Third.

YORKSHIRE, to wit, A. B. late of the castle of *York*, yeoman, was attached to answer *Richard Roe* in a plea, wherefore with force and arms he entered into nine acres of meadow, nine acres of pasture, and seven cattle-gates, with the appurtenances, in the parish of *Aisgarth*, in

Declaration  
in eject-  
ment.

the county aforesaid, which *R. M.* spinster devised to the said *Richard Roe* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *Richard Roe*, and against the peace of our Sovereign Lord the King: And whereupon the said *Richard Roe*, by *C. B.* his attorney complains, THAT WHEREAS the said *R. M.* on the twenty-fifth day of *March*, in the 11th year of the reign of his said Majesty, at *Gayle*, in the county aforesaid, had demised to the said *Richard Roe*, the said tenements, with the appurtenances, to have and to hold the said tenements, with the appurtenances, to the said *Richard Roe* and his assigns, from the twenty-fifth day of *December* then last past, to the full end and term of five years then next following, and fully to be complete and ended; by virtue of which said demise, the said *Richard Roe* entered into the said tenements, with the appurtenances, and was possessed thereof; and the said *Richard Roe* being so possessed thereof, the said *A. B.* afterwards, that is to say, on the twenty-fifth day of *March*, in the said 11th year, with force and arms, that is to say, with swords, staves, and knives, entered into the said tenements, with the appurtenances, which the said *R. M.* demised to the said *Richard Roe* in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said *Richard Roe* out of his said farm, and other wrongs to him did, to the great damage of the said *Richard Roe*, and against the peace of his said Majesty, whereupon the said *Richard Roe* saith he is injured, and hath damage to the value of twenty pounds; and thereupon he brings this suit.

Notice.

Mr. J. K.

I am informed that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and

and I being sued in this action as a casual ejector, and having no claim nor title to the same, do advise you to appear on the first day of next *Easter Term*, in his Majesty's court of Common Bench, at *Westminster*, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving Friend,

10th March, 1772.

A. B.

You may buy printed copies of these declarations on treble penny stamped paper, at any of the law stationers; they are indorsed for delivery in same manner as another declaration.

As you must bring separate actions for as many different premises as there are tenants, each declaration to deliver must be on treble penny, agreeable to the copy thereof you keep by you, on treble penny, in order to make an affidavit of the service of same, to obtain rule for judgment.

If premises are in *London* or *Middlesex*, and When tenant is to appear notice in declaration is to appear the first day <sup>When tenant is to appear</sup> of term, or within the first four days of the term, you may move any time within the four days, and then tenant has but four days inclusive to appear after motion; if moved late in term, tenant has two or three days to appear, but if not moved before the four last days of term, he has until two days before the *essoign* day of the subsequent term. If notice on declaration is to appear, *generally* tenant has the whole term to appear in.

When you move for rule for judgment, you How to annex affidavit to a copy of declaration on treble penny stamp paper, and give it a serjeant with <sup>move for rule for judgment</sup> 10s. 6d. to move same. It is a motion of course, <sup>ment.</sup>



but must be signed by serjeant before it is delivered to secondary, who then files affidavit a declaration on such motion. You must take care to have another copy on stamp to keep by you; or if judgment should go against the casual ejector for want of tenant's entering into rule, you will be forced to have office copy declaration from secondary, to enable you to sign judgment. Rule, *Hil. 2. Geo. 2. C. B.*

Rule for judgment against the casual ejector.

*A.* on the demise of *M.* against *Roe.*

12th day of *March*, upon the affidavit of *C. B. Gentleman*, IT IS ORDERED, That unless *J. K.* tenant, in possession of the tenements in question, or any other person concerned in the title thereof, on *Saturday* next shall appear by an attorney of this court, who shall then forthwith receive a declaration, and plead thereto the general issue, and consent to the common rule for confessing lease, entry, and ouster, upon the trial to be had, let judgment against the casual ejector be entered, and in the mean time, proceedings are to stay upon the motion of serjeant *Burland*.

BY THE COURT.

Note.

In a town ejectment cause, if plaintiff does not move for judgment same term tenant had notice to appear, the court will not grant such rule. In country causes, you may move any time within next issuable term.

Easter

Easter Term, in the 12th year of King  
George the Third.

*Manwaring.*

A. on the demise of M. against R. } YORKSHIRE, to wit, IT IS <sup>Consent</sup> ORDERED by consent of C. B. <sup>rule.</sup> attorney for the plaintiff, and R. R. attorney for J. K. that he may be admitted defendant, and that the said defendant, shall immediately appear by his said attorney, who shall receive a declaration, and plead thereto the general issue this term; and at the trial thereupon to be had, the said defendant shall appear in his own proper person, or by his council or attorney, and confess lease, entry, and ouster, of so much of the tenements specified in the plaintiff's declaration as are in the possession of the said defendant, or of his tenants, or of any persons claiming by or under their title, or that in default thereof, judgment be entered against the defendant, *Richard Ros*, the casual ejector; but let all proceedings against him be stayed until default be made in any of the premises. And by the like consent, IT IS FURTHER ORDERED, That if by reason of any such default, the plaintiff shall be nonsuited upon the

Nine acres of meadow, 9 acres of pasture, 7 cattle-gates, with the appurtenances, in the parish of Aisgarth, in the county of York.

**The Modern Practice of the**

the trial, the defendant shall take no advantage thereof, but shall pay costs to the plaintiff to be taxed by the prothonotary. **AND IT IS FURTHER ORDERED**, That the lessor of the plaintiff shall be chargeable with payment of costs to the said defendant, by this court, in any manner to be allowed or adjusted.

**BY THE COURT.**

*C. B. for the lessor of the plaintiff,  
R. R. for the defendant.*

How defendant must appear and plead to action in ejectment.

Get a rule of assent from secondary; pay for same 6d.; fill it up, and make tenant, instead of the nominal defendant, the defendant therein. Write in the margin of such rule, the premises mentioned in declaration, as in foregoing precedent. It must be signed at bottom with the tenant's attorney's name, leaving room for the plaintiff's attorney's name over it. Ingross *general issue Not guilty*, with the defendant's name, on a treble penny piece of stamped paper, and annex same to the back of rule; enter appearance with filacer; pay him 2s. 6d. who will stamp rule, and write appearance entered thereon; when done, annex plea, and carry same to prothonotary's office; pay prothonotary entering plea, 2s.

Note,

If defendant enters into the common rule to confess, &c. for so much of the tenements as are in his possession, defendant's attorney must forthwith give plaintiff's attorney notice in writing of the tenements so in his possession. Rule, *Trin. 15 Car. 2.*

*A. on*



**A. on the demise of**

*M.*

**In the C. B.**

against

**R.**

S I R,

Take notice that I defend title for nine acres of meadow, nine acres of pasture, and seven cattle-gates, with the appurtenances, in the parish of *Aisgarth*, in the county of *York*, now in the possession of *J. K.* or his under-tenant. Dated the            day of            1772.

**Notice of the  
premisses de-  
fendant de-  
fends for.**

Yours, &c.

To Mr. C. B.  
plaintiff's attorney:  
These.

R. R.  
defendant's attorney.

If a person claims title to premises which he would defend, and is not in possession of the same, he must move court on affidavit of the fact to be made defendant, instead of the nominal defendant. This must be with the consent of the tenant in possession, unless such person is landlord thereof.

**Note.**

Take rule and plea from prothonotary, and if no appearance entered thereon, enter appearance with the filacer, and a *li. lo.* with prothonotary, and charge same on the back of the issue thus; appearance 5 s. 10 d.; *li. lo.* 2 s. 6 d.; then carry rule to secondary, who will keep same, and therefrom draw up two other rules by consent; pay him for rules 4 s. 6 d. each, then ingross your issue for delivery, and annex one of the rules thereto; you charge in this court to defendant for half the consent rule.

**Steps to be taken by plaintiff to draw up consent rule in order to come to issue.**

# The

Issue and  
record in  
ejectment.

The issue in ejectment is only the declaration ingrossed on treble penny paper, and add there- to defendant's plea of Not guilty, with plain- tiff's *similitur* and award of *venire*; when you make up record, it is with a *placita*, and *jurata* as in a common case *mutatis mutandis*.

How to  
charge issue  
on back for  
delivery.

|  |   |   |     |
|--|---|---|-----|
| Copy declaration, fo. unpaid   | o | o | o   |
| Warrant of attorney, one defendant   | o | o | 8   |
| Copy issue, fo.  | o | o | o   |
| Half rule, 2 s. 6 d. out of which<br>defendant is allowed 6 d. paid<br>prothonotary for consent rule | } | o | 2 o |
|  |   |   |     |

How to sign  
judgment a-  
gainst the  
casual ejec-  
tor for want  
of plea.

Search the plea book at prothonotary's office, to see if any plea and rule left by defendant; if none filed, draw up rule for judgment with se- condary; pay for same 4 s. 6 d.; then make *incipitur* of declaration on a sheet of double half crown stamped paper, and on a roll of that term, make out a warrant for defendant; get it signed at warrant of attorney's office; pay signing, if not above four defendants, 8 d.; if five defendants, there must be two warrants; and if nine defen- dants, three warrants, and so on according to the number; this done, carry your papers to prothonotary, who signs judgment; pay him signing same, 12 s. 8 d.

The *poslea* in ejectment on verdict is the same as in a common case *mutatis mutandis*, which is made out by associate.

If the verdict goes for defendant, or plaintiff is *non-suited* on evidence, you must make out a *ca. sa.* against plaintiff in ejectment, and shew same to his lessor, and demand of him the costs taxed thereon, before you can proceed for same.

When

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When plaintiff in ejectment is nonsuited for defendant's not confessing lease, entry, and ouster, you must tax your costs with prothonotary on the consent rule; serve copy of same with prothonotary's *allocatur*; and demand the costs taxed thereon of defendant; and on his refusal to pay same, you may move for an attachment.

GEORGE the Third, &c. To the sheriffs Writ of possession. of *Yorkshire*, Greeting: WHEREAS J. G. lately in our court, before our justices at *Westminster*, by the consideration of the said court, recovered his term yet to come, of and in nine acres of meadow, nine acres of pasture, and seven cattle-gates, with the appurtenances, in the parish of *Aisgarth*, in the county aforesaid, against *A. B.* late of *York*, yeoman, which *R. M.* on the 25th day of *March*, in the 14th year of our reign, demised to *R. R.* to hold and enjoy to the said *R. R.* and his assigns, from the 25th day of *December* last past, unto the full end and term of five years then next following, and fully to be complete and ended, which term is not yet expired: And whereupon the said *A. B.* put out and removed the said *R. R.* from his possession, and ejected him from his said farm, Therefore we command you that you cause the said *R. R.* to have his possession of his said term yet to come of and in the said nine acres of meadow, nine acres of pasture, and seven cattle-gates, with the appurtenances, and now you shall execute this precept, make appear to our justices at *Westminster*, on (the return) and have there this writ. WITNESS, &c.

GEORGE the Third, &c. To the sheriff Writ of possession with a fi. fa. for costs. of *Yorkshire*, Greeting: WHEREAS, &c. (as the former writ verbatim to the return) WE also command you, that of the goods and chattels



tels of the said *A. B.* in your bailiwick, you cause to be made 1. which were adjudged to the said *R. R.* in our said court, for his damages which he had by reason of the trespass and ejectment aforesaid, and have that money before our justices at *Westminster*, at the same time to render to the said *R. R.* for his damages aforesaid, whereof the said *A. B.* is convicted; and have there this writ. WITNESS, &c.

These writs must be ingrossed on a 2s piece of stamped parchment. No *precipe* for the office necessary. Pay signing them at prothonotary's office 1s. 4d. each; sealing at seal office 7d. each; sheriff's warrant thereon 2s. 4d. His fees executing same is 1s. in the pound, on the yearly value of the premises, if same doth not exceed 100l *per annum*, and 6d. in the pound for every 20s. above, and 2s. returning writ. Officers fee executing writ usually 1l. 1s.

Practical remarks.

Ejectment may be brought against a tenant who gives notice to quit at such a time, and doth not quit accordingly, as well as when the landlord gives the tenant notice to quit. *MSS. Cases, C. B.*

Landlord must not receive any rent after ejectment brought, nor till same is determined, it is a waiver of the trespass on which such action is grounded, and he will be nonsuited on the trial for so doing. His remedy for the rent in arrear is by action for the *mesne profits*. *Ibid.*

On landlord being made defendant under stat. 11 Geo. 2. on non-appearance of tenant, court will stay execution against casual ejector.

If defendant absconds to avoid being served with declaration in ejectment, court will on motion order that service on some person in the house shall be sufficient.

In order to constitute good service of declaration in ejectment, there must be actual proof of delivery, or tender and refusal. *Barnes 410 Edit. 171.*

If judgment is obtained against casual ejector, so no trial is lost, court will set such judgment aside in favour of landlord or tenant, on paying costs, and entering into the common rule. *Ibid.*

No person can be admitted to defend in ejectment with tenant in possession, but one that hath been in possession, or who receives the rents. *Ibid.*

The landlord cannot be compelled by tenant to join as a defendant in ejectment. If he should be a member of parliament, tho' he be joined, he cannot be compelled to waive his privilege. *Salk. 256.*

By Stat. 11 Geo. 2. court are empowered to suffer landlord to make himself defendant, by joining with tenant in the action, in case he shall appear. If tenant refuses to appear, judgment shall be signed against casual ejector; but if landlord enters into rule, court will order stay of execution against casual ejector until they make further order therein.

By same statute, a tenant receiving declaration in ejectment, and not acquainting his landlord thereof, so that he may defend the title, shall forfeit three years improved or rack rent of the premises he holds of such landlord.

Where plaintiff recovers in ejectment by verdict, he may bring action for the *mesne profits* from the time of defendant's entry laid in declaration. It is not necessary at the trial to prove any entry of defendant, because he confesses same by rule, and his entry on plaintiff is found by the verdict against him. It may

F f

be

be brought either by plaintiff in the action, or by lessor or lessee; where brought by plaintiff, he need only on trial to produce *possession* of recovery; but where lessor or lessee brings the action, they must prove their title over again, if insisted on by the other side, or else they will be nonsuited. *MSS. Cases, C. B.*

Plaintiff in ejectment being a mere nominal person, and trustee for lessor, if he releases the action, or if pending action for the *mesne profits* he releases same, he may, on motion, be committed for a contempt. *Ibid.*

In ejectment brought on the demise of an infant, court, at defendant's request, will stay proceedings till a sufficient plaintiff be named, or some person will undertake on behalf of infant to pay such costs as shall be adjudged to defendant. 2 *Strange* 932.

If a house is empty, or lands untenanted, and the proceedings are by sealing a lease on the premises, when you move for judgment, there must be an affidavit of sealing such lease, and the purport of lease should be shortly set forth, and in what manner defendant got possession from lessee (who is always made plaintiff in this case, and how declaration was delivered to defendant, that the court may judge of the consistency of the proceedings. *MSS. Cases, C. B.*

By stat. 4 *Geo. 2.* where half a year's rent is in arrear, and the landlord hath a right to re-enter for non-payment, he may serve a declaration without a formal re-entry, or affix same on the door of the house, or on the most notorious part of the land, which shall be deemed a legal service; and on proof that such rent was due before declaration served, and no sufficient distress to cover same, the lessor shall recover.



On moving for judgment in this case, there must be affidavit stating the several matters aforesaid, or that defendant could not be legally served with the declaration, (*as the case may be*); and that copy thereof was affixed as aforesaid, and where, or court will not grant rule. *Ibid.*

If such tenant, before trial, tenders to plaintiff, or brings into court the rent in arrear, with costs, all further proceedings shall cease. *Ibid.*

By stat. 11 Geo. 2. tenants holding at a rack rent, or where rent reserved shall be three-fourths of the yearly value, who shall be in arrear for one year's rent, and shall desert the premises, so that no sufficient distress can be had, two justices of the peace (having no interest therein) at the request of landlord, may view same, and affix on the most notorious part thereof, notice in writing, what day (*at the distance of fourteen days at least from such first view*) they will return to take a second view thereof; and if on such second view, the tenant, or some person on his behalf, shall not pay the rent in arrear, and there shall be no sufficient distress, the justices may put the landlord into possession, and the lease thereof to such tenant as to any demise shall be void.

A suit in ejectment doth not abate by the death of nominal plaintiff, for while there is a man of the name, *in rerum natura* court will intend he was the plaintiff. 1 Med. 252.

Court will not enlarge demise in ejectment without defendant's consent. *Barnes 4to Edit.*

If judgment is given against the casual ejector for want of the real defendant's confessing, &c. he cannot bring a writ of error to reverse a judgment to which he was not a party; and if he brings such writ in the name of the casual ejector, the casual ejector being a friend to the plaintiff's

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 plaintiff's lessor, he may either release the errors, or move court for a *non pros*, which they will order to be entered. Lord C. J. *Gilb. Law of Eject.* page 23. *Barnes 4to Edit.* 181.

Plaintiff cannot have judgment against casual ejector, till common bail filed. *Ibid.*

A new trial may be granted in ejectment, as well as in any other action, if the circumstances of the case justify such request. *MSS. Cases, C. B.*

Matters of ejectment are immediately under the controul of the court, and they, on application, will model them to answer every purpose of justice and convenience. *Ibid.*

On application, court will admit landlord as a co-defendant with his tenant, or to defend the title alone. *Ibid.*

Ejectment on vacant possessions in *London* or *Middlesex*, on the new act of parliament, may be moved at any time in term, notwithstanding the old rule. *Trin. 32 Car. 2. Barnes 4to Edit.* 172.

## E R R O R.

If a person is aggrieved by a judgment given in this court, he may remove such judgment by writ of error into *K. B.*

How and  
 when to  
 bring writ of  
 error.

When plaintiff hath obtained judgment, if defendant means to bring error on such judgment, his attorney must, pending time allowed by court to move in arrest of judgment, take out rule with secondary to be present at taxing costs. Pay for same 4s. Serve copy on plaintiff's attorney. Bespeak your writ of error of cursitor, and get same allowed with clerk of the errors, that you may be ready to serve copy-allowance thereof when you attend prothonotary with plaintiff's attorney to tax costs in the cause.

When

When you bespeak writ of error of curfitor, you leave with him a *precipe* for that purpose.

GEORGE the Third, &c. TO our trusty Form of writ and well beloved Sir *William De Grey*, Knight, of error. Chief Justice of the Bench, Greeting: Forasmuch as in the record and process, and also in giving of judgment in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between *A. B.* and *C. D.* Gent. one of the attornies of our court of the bench, of a certain plea of trespass on the case, done to the said *A.* by the said *C.* as it is said, manifest error hath intervened, to the great damage of the said *C.* as by his complaint we are informed: We willing that the said error, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, DO command you, that if judgment be given thereupon, then you send to us distinctly and plainly, under your seal, the record and process of the said plaint, with all things touching the same, and this writ, so that we may have them on (*the return*) wheresoever, &c. that inspecting the record and process aforesaid, we may cause farther to be done thereupon for amending the said error, as of right, and according to the law and custom of *England*, shall be meet to be done. WITNESS, &c.

You pay curfitor for this writ when you leave *precipe*, 13s.; when got, carry it to Mr. *Lewis* in *Paper Buildings, Temple*, who allows same; pay allowing writ, 2l. 2s. 6d.; a copy of such allowance must be served on plaintiff's attorney, for till done, the writ of error is no *supersedeas* to the execution; plaintiff might otherwise take out against the defendant. Rule, *Mich.* 28. Car. 2. C. B.



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If the matter is bailable, you must put in same in due time, after being served with rules for that purpose; and the same steps are taken on this writ after the same is transcribed into the *K. B.* as on a writ of error on a judgment in that court. Vide *the Complete Practice of the K. B.* page 341.

Statutes relating to this writ,

By stat. 3 *Jac.* 1. execution shall not be stayed upon any writ of error for reversing a judgment in any action or bill of debt upon any single bond for debt, or on any obligation, with a condition for the payment of money only, or on any action or bill of debt for rent, or on any contract, unless the party suing same, shall, with two sufficient sureties, enter into a recognizance in double the sum recovered, to prosecute same with effect, and pay (if judgment affirmed) all debts, damages, and costs adjudged on former judgment; and also all costs and damages to be awarded for delay of execution.

By stat. 13 *Car.* 2. execution shall not be stayed on writ of error, *after verdict* and judgment thereon, in an action of debt on 2 *E.* 6. for not setting out tithes, action on the case upon promise for payment of money, action *sur trover*, covenant, detinue, and trespass, unless bail given as directed by stat. 3 *Jac.* 1.

By stat. 16 & 17 *Car.* 2. execution shall not be stayed on writ of error, *after verdict and judgment*, in any personal action, unless bail given, nor on judgment *after verdict in dower*, or *ejunctione firmæ*, unless the plaintiff in error shall become bound, &c. writs of error brought by executors and administrators, popular actions, actions on the penal statutes, (*except on 2 E. 6.*) Indictments, presentments, informations, and appeals, are excepted out of this statute.

By stat. 5 *Geo.* 1. all writs of error wherein there shall be any variance from the original record,

record, or other defect may be amended by the court, and made agreeable to record; and where any verdict hath been given in any suit, &c. in any of his Majesty's courts at *Westminster*, or other court of record, judgment thereon shall not be stayed or reversed for any defect or default in form or substance, in any bill, writ, &c. or for variance in such writs from the declaration or other proceedings.

No bail necessary on bond for performance of *Practical* covenants only, but where the condition there- marks. of is to pay the mortgage money. Also bail to error brought on such judgment will be required. *Barnes 4th Edit. 78, 98.*

No execution can issue on error brought in this court, till defendant in error obtaining certificate from clerk of the errors that record is not removed, and a *non pros* thereon only signed. Rule, *Trin. 28 Car. 2. C. B.*

Writ of error is no *superfedeas* in itself, till allowed by clerk of the errors.

Where special bail required in error, it must be put in in four days after allowance of writ, and perfected in four days after exception taken thereto by defendant in error. Rule, *Mich. 28 Car. 2. & Mich. 6 Geo. 2. C. B.*

After writ of error allowed, and *superfedeas* obtained thereon, no execution can issue for not transcribing record without certificate from clerk of the errors, that plaintiff hath neglected to transcribe agreeable to rules served on him for that purpose. Rule, *Mich. 28 Car. 2. C. B.*

If rule for better bail in error served in vacation, plaintiff in error must perfect same in four days; and if defendant in error don't approve of same, on serving defendant with another rule, he hath till the first day of term to perfect same.

Action

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Action of debt may be brought on judgment pending writ of error against principal or bail, execution only is stayed till writ determined; but if plaintiff takes out execution, defendant or his bail must apply to court to stay same, which court always grants. *Barnes 4to Edit. 82.*

Writ of error returnable before judgment given, is such a fault as is not amendable by the statute 5 Geo. 1. *Strange 807.*

Error in judgment, on a writ of error brought thereon, may be amended without costs, the statute not giving costs on *amending* as it does on *quashing*. *Strange 863.*

Court will not quash writ of error, if there are twenty-nine years between judgment and bringing writ, though plaintiff is restrained to twenty years, as it would deprive him of the benefit of replying to the exceptions in the statute. *Strange 837.*

No bail is necessary on writ of error brought on an action of debt on a former judgment. *MSS. Cases, C. B.*

A writ of error cannot be *nonprossed*, without defendant in error first taking out rule to assign errors. *Ibid.*

A plaintiff in a suit may bring error to reverse his own judgment, but when brought, court on motion will oblige him to assign errors. *Ibid.*

No damages can be recovered on a *scire facias quare executionem non*. *Ibid.*

If error brought in parliament on judgment in *ejectment*, court will oblige plaintiff in such writ to enter into a rule not to commit *waste*, pending same. *Ibid.*

If error brought, and Chief Justice dies before he returns same, such writ thereby abates, but defendant in error cannot take out execution without leave of court; it is a contempt, and the party would be compelled to make restitution. *Ibid.*



On judgment against two in C. B. both must join in writ of error; if one refuses, he must be summoned and severed, for else every defendant might bring a separate writ of error to delay justice. *Cartb. 7.*

## F I N E S.

Fines are used as common assurances to pass a right and limit an estate from one to another, as appears by the *concord* thereof, and are of four different sorts, *viz.*

*Sur cognizance de droit come ceo que il ad de son done, &c.*

*Sur done, grant et render.*

*Sur cognizance de droit tantum.*

*Sur concessit.*

These fines are for several purposes; but the fine *sur cognizance de droit come ceo, &c.* is that most generally used, and which I shall here treat of in the practice.

PERSONS *qualified to pass Fines.*

• Such persons, male or female, bodies sole or corporate, that can convey by deed, and have no legal incapacity, may be cognizors in a fine.

Civil corporations as have an absolute estate in possession, may, by consent of such corporation, pass a fine.

Persons outlawed or waived in personal actions only, may levy a fine, except against the King or Lord of the fee.

A joint-tenant, a tenant in common, or partner, may levy a fine of lands so held by him to a stranger, or to another joint-tenant, tenant in common or partner. *Stat. 26 Hen. 8.*

Tenants in fee-simple in remainder or reversion, and tenant for life, may levy a fine *per grant et release*, &c. of the lands which he holds for life to hold to the cognizee for life of the tenant for life; but if the estate be larger, it is a forfeiture of such estate. *Stat. 4 Hen. 7.*

Tenants in tail after possibility, tenants in dower, or by the curtesy, and spiritual persons, may levy a fine of lands in their own right, but not belonging to their churches.

A fine may be levied by a feme covert, and such fine is only voidable by the husband, and not by her after his decease.

### PERSONS *not qualified.*

Infants, women covert, idiots, lunatics, one that is blind, deaf, and dumb, one that is in a state of dotage, one compelled by imprisonment, &c. one having an estate-tail of the King's gift, cannot levy a good fine to bind the King, or to bind the issue in tail; a fine levied by the heir that is an intruder on the King's possession, is void; so are fines levied of lands prohibited to be sold by act of parliament; a person having an estate in fee-simple tail or for life, in right of his wife, cannot levy a fine thereof without her consent. *Stat. 32 Hen. 8.*

How to describe the cognizors and cognizees in fines.

They must be described by their right names of baptism and surnames; if two of a name, they must be called elder or younger. Peers, &c. are described by their Christian names and titles only.

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A corporation must be described as in their charter.

The most worthy things must be put first, *How to describe the things whereof a fine is to be levied.*

|                      |                     |
|----------------------|---------------------|
| Honour,              | Stray,              |
| Castle,              | Mill,               |
| Manor,               | Toft,               |
| Island,              | Curtilage,          |
| Barony,              | Dove-house,         |
| Messuages,           | Garden,             |
| Cottage,             | Orchard,            |
| Land,                | Felons goods,       |
| Meadow,              | Deodand,            |
| Pasture,             | Hospital,           |
| Wood,                | Furzes,             |
| Underwood,           | Heath ground,       |
| Chapel,              | Moorish ground,     |
| River,               | Rent,               |
| Chauntry,            | Common,             |
| Parsonage,           | Hundred,            |
| Rectory,             | Way,                |
| Advowson,            | Ferry,              |
| Vicarage,            | Franchise,          |
| Tithes impropriate,  | Seigniorie,         |
| Estovers,            | Reversion,          |
| Foldage,             | Toll,               |
| Corody,              | Tollage,            |
| Office,              | Picage,             |
| Fishing,             | Pontage,            |
| Warren,              | Acquittal,          |
| Fair,                | Sevices,            |
| Mine,                | Portions of Tithes, |
| View of frankpledge, | Oblations, and the  |
| Waif,                | like,               |



How a fine  
may be pas-  
sed.

A fine may be passed four different ways,  
*viz.*

AT BAR.

BEFORE *the Chief Justice of the court.*

BEFORE *a judge of the court on the circuit;*

Or,

BEFORE *commissioners appointed to take the  
same by dedimus potestatem.*

Passing fine  
at bar.

If the fine is to be passed at bar, you draw out a *precipe* of the fine on a half sheet of paper, and carry same to curfitor of the county where the houses or lands intended to pass lay, who thereupon makes out a *writ of covenant*. Pay curfitor for same 7s. 6d. When you have got this writ, ingross *precipe & concord* on a piece of parchment; carry same with the parties who are to pass the fine to the Common Pleas bar at *Westminster*. Give *precipe*, concord, and writ of covenant to a serjeant, who after proclaiming same, will deliver the writ of covenant to the secondary. If any of the parties are married women, they must be examined by the puisne judge of the court; for which purpose you must take *precipe* and *concord* to the judge, who will examine the party; the court fees for this business are about 5s. and 6d.; when done, annex *precipe* and *concord* to writ of covenant, and complete fine as after directed.

When before  
the Chief  
Justice.

Make two copies of *precipe* and *concord*, *viz.* one on paper, and another on parchment, as before, write a caption on each; the parties must sign their names to both. Carry them to the Chief Justice's house or chambers, who will take their acknowledgment; and if any of the parties be a *feme covert*, he will examine her. Pay clerk taking same 12s. You leave paper *precipe* with clerk, and take the parchment one away signed by the judge; then carry same with

*precipe*

*precipe* of writ of covenant to curfitor, who makes out same, when you proceed to complete fine.

Make two copies of *precipe* and *concord* as before. Carry parties to the judge, who takes the acknowledgment. Pay his clerk 13 s. When before a judge on the circuit. Take the *precipe* on parchment from the judge, and leave that on paper; when judge returns from the circuit, carry your *precipe* to curfitor, and bespeak a *dedimus potestatem* directed to the judge who took the acknowledgment. When *dedimus* is made out, carry same to judge's clerk, who will return substance of *concord* on the back of *dedimus*. Pay him returning same 1 s. 6 d. bespeak writ of covenant, and complete fine.

Draw out a *precipe* on paper with commissioners names who are to take the fine. There must be five commissioners, the first of whom must be a knight or serjeant at law. Carry same to curfitor, who will make out a *ded. po.* pay him for same 1 l. 1 s. 2 d. Indorse thereon as follows: *The execution of this writ appears in a certain schedule hereto annexed.* When you transmit same to the party who is to execute the business, you must ingross a *precipe* and *concord* on parchment; and get the acknowledgement made before two out of the five commissioners, who subscribe their names to the caption, and also on the back of *ded. po.* There must be an affidavit annexed of the due acknowledgment thereof, *vide* page 40. which is transmitted to town with same, when you bespeak writ of covenant, and proceed as before.

A writ of *ded. po.* holds in force but one year; so if there is any material mistake in writ, it must be either altered or renewed. If such alteration be in lessening the parcels or parties, curfitor charges for same only 9 s.; if to increase same, you must have a new writ, for which

curfitor charges 1 l. 5 s. 8 d. If the mistake is small and immaterial, curfitor will alter *ded. po.* without any expence.

Where all the parties to the fine do not acknowledge same, there must be a new writ; and such as do not acknowledge same, will be omitted therein; for such new writ, curfitor charges 10 s. You may have a new writ, and *writ of covenant* at the same seal. The *dedimus po.* must be transmitted as before to be returned. There is no recaption necessary; the commissioners will return the old writ; and you may, to save time pending this business, prosecute your *writ of covenant*.

When *dedimus po.* and caption are returned, you carry same to a judge of the court for his *allocatur* thereon. Pay clerk for same 4 s.

If the parties live in town, you annex a *precipe* and *concord* to *dedimus po.* Carry commissioners to the parties, and take acknowledgment; subscribe caption; indorse *dedimus po.* make affidavit of caption; get judge's *allocatur*; bespeak *writ of covenant*, and complete fine.

The writ of covenant may be bespoke of the curfitor, before the caption taken in manner before mentioned; but curfitor will not deliver same till you produce to him the *precipe* and *concord* duly acknowledged.

Form of  
*precipe* for  
*writ of cove-*  
*nant*.

Middlesex, to wit,  
or where lands  
lay that are to  
be passed.

COMMAND A. B.  
gentleman, and L. his wife,  
that justly, &c. they per-  
form to C. D. the covenant  
made between them of (*the*  
*premises to be passed*) with  
the appurtenances in the  
county



county of N. And UNLESS,  
 &c.

Returnable (*the return you make  
 your writ of covenant.*)

Pay curfitor for writ of covenant on leaving  
 him *precipe* for the same 7 s. 6 d.

*Middlesex*, to wit, COMMAND *A. B.* gent. and *L.* his wife, that justly, &c. they perform  
 to *C. D.* the covenant made between them of  
 (*the premisses*) with the appurtenances in the  
 county of *H.* And UNLESS, &c.

Form of *pre-  
 cipe* for a  
*dedimus po-  
 testatem*, ei-  
 ther before a  
 puisne judge,  
 serjeant, or  
 when fine is  
 taken by  
 commission-  
 ers.

The curfitor makes out the *dedimus potestatem*  
 on the above *precipe*, when to be taken before  
 a judge or serjeant at law; you pay for same  
 10 s. 6 d. Deliver same to judge or serjeant's  
 clerk, who returns same. If the fine is to be  
 taken before commissioners, the *precipe* for the  
*dedimus* is the same as above, only you add at  
 bottom of the *precipe* the commissioners names;  
 there are to be five, and the first must be a  
 knight, thus:

*Dedimus potestatem* directed to *J. B.* Knight.  
*C. R.*  
*L. M.*  
*F. G.*  
*R. S.*

You pay curfitor on leaving this *precipe* for  
*dedimus* 1 l. 5 s. 8 d. and when returned by  
 commissioners, with *precipe* and concord acknow-  
 ledged, you get judge's *allocatur*; pay for same  
 4 s. when you proceed to complete fine.

Form of  
precipe and  
concord.

*Middlesex*, to wit, **COMMAND** *A. B.* gent. and *L.* his wife, that justly, &c. they perform to *C. D.* the covenant made between them of (*the premisses*) with the appurtenances in the county of *H.* And UNLESS, &c.

Concord.

AND the agreement is such, to wit, that the aforesaid *A.* and *L.* have acknowledged the aforesaid (*the premisses*) with the appurtenances, to be the right of him the said *C.* as those which the said *C.* hath of the gift of the aforesaid *A.* and *L.* and these they have remised and quit claimed from them the said *A.* and *L.* and the heirs of the said *A.* to the aforesaid *C.* and his heirs for ever. AND MOREOVER, the said *A.* and *L.* have granted from them and the heirs of the said *A.* that they will warrant to the aforesaid *C.* and his heirs the aforesaid (*the premisses*) with the appurtenances against them the said *A.* and *L.* and the heirs of the said *A.* for ever. And for this, &c.

TAKEN and acknowledged the      day of  
in the 12th year  
of the reign of our sovereign Lord George the Third, now King of Great Britain, &c. as before.

*A. B.*  
*L. B.*

Two copies of this *precipe* and *concord* must be wrote and signed by the cognizors, *viz.* one on paper, and one on parchment. When you take them to acknowledge same; pay for caption before chief justice, puisne judge, or serjeant, 12 s.

On

## Court of Common Pleas:

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On *dedimus* to commissioners, any two of Note. them may take the fine; when taken, annex *precipe* and *concord* to *dedimus*, with an affidavit of the due caption, and transmit same to town, in order to be completed. *Rule, Hil. 17 Geo.*  
2. C. B.

### MANNER of completing Fine after writ of covenant is obtained.

Carry writ of covenant to the alienation of- Alienation  
fice in the *Temple*, to be compounded by the office.  
commissioners, who attend from ten to twelve in the morning, except holidays. Their rule for setting a fine is, for a manor 20 s. an advowson 20 s. for every hundred acres about 10 s. for every messuage without land 6 s. 8 d. except in *London*, where the rule is to pay for every messuage 1 l. unless the rack-rent is sworn to before the commissioners. If you think the fine is set too high, take your client before commissioners, or before a judge of the court, to make an affidavit of the yearly value of the premises to be passed, and commissioners will moderate and proportion the fine according to the rent of the premises ascertained by such oath.

Between *A. B.* plaintiff,  
*C. D.* Deforciant.

*London*, to wit, OF ten messuages, &c. (as Form of af-  
described in writ of cove- fidavit to  
nant, the above mention- moderate a  
ed *A. B.* of the parish of, fine,  
&c. maketh oath, That  
the whole annual rack-rent  
G g 3 of



## The Modern Practice of the

of the above mentioned pre-  
misses, does not exceed the  
yearly sum of 1.

Sworn, &amp;c.

A. B.

The OLD RULE for paying the Fine  
on passing lands or tenements at the  
ALIENATION OFFICE.

|  | l. | s. | d. |
|--|----|----|----|
| For every 5 marks and 20 s.                      | 0  | 6  | 8  |
| From 5 marks and 20 s. to 5 marks<br>and 40 s.   | 0  | 10 | 0  |
| Above 5 marks and 40 s. to 10 marks<br>and 20 s. | 0  | 13 | 4  |
| <i>And so in proportion to their full value.</i> |    |    |    |
| Lands rated at 2 l. or under                     | 0  | 0  | 0  |
| At above 2 l. to 3 l. 6 s. 6 d.                  | 0  | 6  | 8  |
| At £. 5 6 8                                      | 0  | 10 | 0  |
| 7 13 4   | 0  | 13 | 4  |
| 8 13 4   | 0  | 16 | 8  |
| 10 0 0   | 1  | 0  | 0  |
| 12 0 0   | 1  | 3  | 0  |
| 14 6 8   | 1  | 6  | 8  |
| 16 6 8   | 1  | 10 | 0  |
| 17 13 4  | 1  | 13 | 4  |
| 18 13 4  | 1  | 16 | 8  |
| 20 0 0   | 2  | 0  | 0  |
| 22 0 0   | 2  | 3  | 4  |
| 23 6 8   | 2  | 6  | 8  |
| 25 6 8   | 2  | 10 | 0  |
| 27 13 4  | 2  | 13 | 4  |
| 28 13 4  | 2  | 16 | 8  |
| 30 0 0   | 3  | 0  | 0  |

The above table regulates the *prafine*. The  
other fine paid on passing lands or tenements,  
is

is called the *posfine*, which is settled as follows, viz. as much and half as much more as the *præfine*. If the *præfine* is 6 s. 8 d. the *posfine* will be 10 s. These two  *fines*  are paid on passing writ of covenant at the alienation office; pay receiver 4 d. *Stat. 32 Geo. 2.*

After writ of covenant hath lain two days in the *alienation office*, carry same to return office Return of-  
fice. in the *Temple*. Pay returning same 1 s. 6 d. Having lain two days there, make out a warrant of attorney on a piece of unstamped parchment in form following :

### TRIN. TERM, &c

London, to wit, *A. B. (the cognizee)* puts in his Warrant of  
stead *C. B.* his attorney, to attorney.  
prosecute a writ of covenant  
against *C. D.* and *L.* his  
wife, of, &c. (*naming pre-  
misses*) with the appurte-  
nances in *H.* in the said  
county.

Carry warrant with writ of covenant to the Warrant of  
warrant of attorney office in *Clifford's Inn*, attorney of-  
fice. *Fleetstreet*; file your warrant of attorney; pay  
for same 4 d. and clerk marks your writ of co-  
venant.

Carry writ of covenant to this office, which Custos bre-  
vium office. is in the *Temple*. The officer charges you 3 s.  
and 8 d. Two days after, you carry the *dedi-  
mus* and *caption* to the same office to be pro-  
claimed, when you take away the writ of cove-  
nant, and annex it to *dedimus* and *caption*.

Carry writ of covenant, *dedimus*, and cap- King's silver  
tion to this office, which is near the *Temple gar- office.*  
den. The fee charged is 1 s. 8 d. If in the  
*Western*

## The Modern Practice of the

*Western* circuit 2 s. and for every caption above one 6 d.

Chirographers office.

After writ of covenant hath lain its proper time at the King's silver office, carry same to this office, which is in the *Inner Temple Lane*. The fee charged here is 5 s. 6 d. in term, and 6 s. 2 d. in vacation. The officer here will deliver over the writ to the clerk in whose division the lands lie, to ingross the indentures of the fine.

About a fortnight after, call at his seat for the *indentures*, for which you pay according to the length or number of warranties, *viz.* 3 s. 6 d. for the first warranty, and 6 d. for every other warranty, and 6 d. more where the cognizor or cognizee are cross names. This done, the fine is complete. If expedition should be necessary in passing a fine, the clerks of the several offices through which the fine passes will hasten same for the additional fee of 6 d. at each office.

Practical remarks.

Lands bought of divers persons by several purchasers may pass in one fine; (if the parcels are large, curfitor will expect them to be divided) and in that case writ of covenant must be brought by all the vendees against all the vendors, and each vendor in the concord must warrant against himself and his heirs only.

If the lands to be passed lie in several counties, you may sue out a *dedimus po.* into which of the counties you please, and then in your two *precipes* for the two writs of covenant, you mention only the lands in each county.

You pay for the *dedimus* 2 l. 9 s. 10 d. and thereby save the expence of one stamp; both these *precipes* are ingrossed on one piece of parchment. There is but one acknowledgement; when signed by the parties, and judge's *allocatur* obtained thereon, curfitor makes out the two writs of covenant, for which you pay double



double fees passing thro' all the offices except judge's *allocatur*.

If you want to stop a fine passing, you must enter a *caveat* at the judge's chambers and King's silver office, and desire notice may be given you thereof. An entry of a *caveat* at the King's silver office hath been held sufficient. *Barnes 4to Edit. 215.* Caveat.

The King's silver office, and Chirographer's office, are the proper offices to search for a fine, they keeping entries of all fines that pass. At the King's silver office, the charge of searching is 4 d. a term; at the chirographer's, the fee is 2 d. a term, and 8 d. a year. Where to search for a fine.

Many fines on mortgages are carried no further than the King's silver office, and there recorded. Note.

In order to give a fine in evidence, get a copy of the same, and the proclamations thereon from the chirographer's office; examine it with the original, in order to prove same at the trial. How to make indentures of a fine evidence.

## RECOVERIES.

Common recoveries are certain forms framed by the wisdom and policy of the law, for the better assurance of lands. They are generally used for barring estates tail, remainders, and reversions expectant thereon. Without such process of law a tenant in tail can make no jointure for a wife, provision for his children, or payment of his debts. The law always construes them favourably, nor are they to be overthrown by nice construction.

In a recovery four things must be observed, *viz.*

FIRST,

## The Modern Practice of the

**FIRST,** *The demandant*, who is plaintiff in the writ of entry, and supposed to be aggrieved, and therefore demands satisfaction for such wrong.

**SECONDLY,** *The tenant to the precipe*, (being the person who does the wrong) against whom such writ is brought.

**THIRDLY,** *The voucher*, who upon a writ of entry being brought against the tenant to the *precipe*, appears in person, or by attorney, and defends his right, and vouches to warranty the person against whom he claims the land. Thus the demandant is in a state to know of whom to demand the land, for the tenant having vouched such person to warranty, that person by his warranty becomes (in construction of law) sufficient for the demandant to claim the land of.

The effect  
of recovery.  
7. 88.

A recovery with a single voucher bars the estate the person was in possession of when he suffered such recovery, but no other.

When with a double voucher, and the tenant in tail comes in as vouchee, it bars all the estates he has in possession, and all others, tho' discontinued and turned to a right.

When with a treble voucher, it makes a perpetual bar of the estate of the tenant, and of every such estate of inheritance that at any time had been in the first or second voucher, or their ancestors, whose heirs they are, and of every reversion thereon expectant.

**FOURTHLY,** A recovery may be suffered of all things on which a writ of covenant for levying a fine lies, and such persons and names may be demandant's tenants, and vouches in recoveries, as may be cognizors or cognizees in fines.

The

The things most worthy and of highest dignity, are to be placed before things less worthy. How lands, &c. are to be placed.

Things general, before particular.  
Entire or whole things, before parts.

LONDON, to wit, } COMMAND *A. B.* that Precipe for  
or where the pre- } he justly, &c. render to recovery  
misses lie. } *C. D.* (*the premisses, de-* with a single  
scribing them) with the ap- vouchee.  
purtenances in *H.* which  
he claims, &c.

The tenant personally }  
voucheth to warranty. }  
*J. W.*

LONDON, to wit, } COMMAND *A. B.* that When with  
justly, &c. render to *C. D.* a double  
(*the premisses*) with the ap- voucher.  
purtenances in *H.* which  
he claims, &c.

The tenant personally }  
voucheth to warranty }  
*J. R.* gentleman, who  
being also present, }  
voucheth over. *J. W.*

If recovery be with a treble or quadruple Note.  
vouchee, you only vary it according to the  
number of vouchees, always placing the com-  
mon vouchee last.

LONDON, to wit, } COMMAND *A. B.* that Precipe  
justly, &c. render to *C. D.* where te-  
(*the premisses*) with the ap- nant appears  
purtenances in *H.* which in person,  
he claims, &c. and the  
vouchee or  
vouchees by  
attorney.

The



## The Modern Practice of the

The tenant personally  
 voucheth to warranty  
*J. R.* whereupon the  
 summons is returnable  
 on (*the return of writ*  
*summons*) who by at-  
 torney voucheth over.  
*J. W.*

**Precipe**  
 where nei-  
 ther the te-  
 nant or  
 vouchee ap-  
 pear in per-  
 son but by  
 attorney.

**LONDON**, to wit, **COMMAND** *A. B.* that  
 justly, &c. render to *C. D.*  
 (*the premisses*) with the ap-  
 purtenances in *H.* which he  
 claimeth, &c.

The tenant by attorney  
 voucheth to warranty  
*J. R.* and *L.* his wife,  
 (whereupon the sum-  
 mons is returnable on  
 (*the return*) who also  
 by their attorney  
 vouch over. *J. W.*

**When at  
 bar.**

The foregoing *precipes* are wrote on a sheet of  
 paper, book-wise.

Carry tenant and vouchee to the court, and  
 place them on the outside of the bar; (if tenant  
 should be a peer, he must be placed in the mid-  
 dle of the bar between the King's serjeants).  
 Give *precipe* to one of the serjeants, who will  
 count thereon, &c. and having signed his name  
 to *precipe* will return it you.

Pay serjeant's clerk, if recovery be with a  
 single vouchee, 6 s.

If with a double vouchee, 8 s.

If with a treble vouchee, 10 s.

If with a quadruple vouchee, 12 s.

When tenant or vouchee appears by attorney,  
 serjeant's clerk charges 4 s. more.

This done, give *precipe* to secondary, and he will enter same in his book, and write under it PRECIPE AT BAR. Pay him 4 s. 6 d. If by warrant of attorney 2 s. more.

Make a copy of PRECIPE on paper for the Writ of *en-* cursitor of county where the lands lie; deliver try. same to him, and bespeak writ; he charges for same 7 s. 6 d. and if parcels are long 6 d. more.

The compounding this writ is done in the same manner as writ of covenant, *vide* page 334, *Compound-* but there is no *possession* due thereon. When writ. compounded, the office fees are about 2 s. in term, and 3 s. in vacation. You leave writ for officer to make the proper indorsement thereon. The writ of entry remains three days at this office.

While your writ of entry is passing, you prepare a draft of your recovery, in which the parcels must be exactly taken from the writ of entry; leave draft at prothonotary's office to be looked over, and get plea rolls from them, which must be of the term writ of entry is returnable. *Directions for preparing recovery.*

George the Third, &c. To the sheriffs of *Form of writ of seisin.* London, greeting: KNOW ye that A. B. in our court, before our justices at *Westminster*, hath recovered his seisin against C. D. of the (*the premisses*) with the appurtenances in H. by our writ of entry upon a disseisin *in le. post.* THEREFORE, we command you, that without delay you cause the said A. to have complete seisin of the said tenements, with the appurtenances, and do you forthwith make appear to our justices at *Westminster*, in what manner you shall have executed this precept: And have you there this writ. WITNESS Sir William De Grey, Knight at *Westminster*, &c.

H h

This

## The Modern Practice of the

This writ must be ingrossed on a 2 s. piece of stamped parchment. Pay prothonotary signing same nothing, till he signs exemplification of recovery, when he charges for this writ. sealing 7 d.

The return  
of this writ.

It must be returnable at least fifteen days after the *teste* day of the return of writ of entry. If writ of entry is made returnable, so that there is not fifteen between the return of writ of entry, and last return of the term; then you return your writ of *seisin* forthwith. If the writ of entry be returnable, the first return of any term except *Easter*, then the *seisin* must be made returnable the first return of the subsequent term; and if returnable the last return of *Easter*, the *seisin* must be returnable the second return of *Trinity*.

Tells.

The writ of *seisin* must be *tested* the fourth day inclusive from the return of writ of entry.

Manner of  
indorsing re-  
turn of li-  
very and *sei-*  
sin on writ  
of *seisin*.

BY VIRTUE of this writ to us directed, on the \_\_\_\_\_ day of \_\_\_\_\_ (*any day between teste and return of writ of seisin not a Sunday*) in the within-written year, we have caused full *seisin* of the tenements within specified, with the appurtenances, to be delivered to the within-named *A. B.* as we are within commanded.

*John Wilkes,*

*Frederic Bull, Sheriffs.*

This done, fasten your writs of *entry* and *seisin* together, and leave them at the return office, (which is kept where Prothonotary *Dickens's* office was in the King's Bench Walks). Pay officer indorsing these writs 1 s. 6 d. each; two days after you may call for them, when you carry writ of entry to the attorney general's for his hand to be set thereto. Pay for same 10 s.; two days after, you may call for same, when this writ is complete.

The



The writ of *entry* and *seisin* being passed, <sup>Ingrossing</sup> enter your draft recovery on the roll in a strong <sup>recovery on</sup> ingrossing or text hand, as far as *in mercy*, &c. <sup>roll.</sup> and then in a small hand to the end.

It must be exemplified in a strong text hand <sup>Manner of</sup> on a 10 s. skin of vellum, beginning the same <sup>exemplifying</sup> thus : <sup>recovery and</sup> <sup>form there-</sup> <sup>of.</sup>

GEORGE the Third, &c. TO ALL TO WHOM these our present letters shall come, *greeting* : KNOW YE, that amongst the pleas of land inrolled at *Westminster*, before Sir *William De Grey*, Knight, and his brethren our justices of the Common Bench, of the term of (*the term recovery suffered*) in the 12th year of our reign, upon the (*number of roll*) it is thus contained : Writ of entry returnable from (*the return of writ of entry*) *London*, to wit, *A. B.* in his proper person, to the end of the writ, except when the return of writ of seisin is with an *ad quem diem*, when that part must be on the folding up of the exemplification, and then in the same hand and line conclude recovery thus : All and singular which premisses, at the request of the said *A.* (*the demandant*) by the tenor of these presents, we have commanded to be exemplified. In testimony whereof, we have caused our seal appointed for sealing writs in the Bench aforesaid to be affixed to these presents, WITNESS Sir *William De Grey*, Knight, at *Westminster*, the                      day of                      in the 12th year of our reign.

*Manwarring.*

It is governed by the return of writ of seisin, <sup>Teste of</sup> <sup>exemplifica-</sup> <sup>tion.</sup> *viz.*

If writ returnable forthwith, the exemplification must be *tested* the last day of term.

If returnable same term judgment given, it must be *tested* some day afterwards in that term.

H h 2

If

If of a subsequent term, it must be *tested* the last day of the term judgment is given.

Passing same  
with pro-  
thonotary.

Carry exemplification, roll, and writs to the prothonotary's office, and of the term writ of entry is returnable, (*on recovery remembrance*) ingross your *precipe*, and add in small hand the return and *teste* of writ of entry, names of the summoners, pledges, and sheriff, in which business one of the clerks will direct you; and also how to docket same, when you examine your *precipe*, writ, roll, and exemplification with clerk, who he signs your exemplification.

Fee, if with a double voucher in person, 13 s.

If with a double voucher by warrant of attorney; 1 l. 5 s. 6 d.

If with a treble voucher, 2 l. and so according to the number of vouchers.

Sealing re-  
covery.

It must be sealed at seal office; pay sealing 6s. 2 d. and for a box pay sealer 10 d.

### MANNER of suffering a recovery where the parties appear by attorney.

Where the tenants or vouches live distant from London, and must appear by attorney; the warrants of attorney are taken two ways, *viz.*

Either by a judge of assize in the circuit without a *dedimus potestatem*, or by a *dedimus* directed to commissioners (which is the most usual way). In this case, it is usual to make a person who lives in town tenant to the *precipe*, to appear at bar, so that your *dedimus* is only to take the acknowledgment of the warrants of attorney of the vouches.

Dedimus to  
take war-  
rants of at-  
torney.

Make a copy of *precipe* on paper; carry same to cursitor of the county where lands lay, in order for him to make out *dedimus*. Write commissioners names at the bottom of *precipe*; there must be five commissioners; one must be a

knight. Pay curfitor for *dedimus* 1 l. 6 s. 2 d.  
The attorney in the country appoints two out  
of the five commissioners to take the warrants,  
which must be wrote on parchment without  
stamp, together with copy of *precipe*.

London, to wit, COMMAND, &c. (as in Form of  
the foregoing *precipes*). precipe.

C. D. and L. his wife, whom A. B. (the te- Form of  
nant) vouches to warrant, appoint in their warrants.  
stead C. B. and R. R. their attornies jointly  
and severally, against J. G. to gain or lose of  
a plea of land, &c.

|                                |       |
|--------------------------------|-------|
| Taken and received by the said | C. D. |
| C. D. and L. his wife, (and    | L. D. |
| the said L. examined apart)    |       |
| the day of                     |       |
| in the year of our Lord 1772,  |       |
| before us,                     | H. R. |
|                                | F. T. |

If both tenant and voucher appear by attor-  
ney, and your recovery be with a double  
voucher, draw your warrants of attorney on a  
piece of unstamped parchment, first writing the  
*precipe* as before directed.

London, to wit, J. C. puts in his stead A. A. Form of  
and T. C. his attornies jointly and severally, warrants  
against O. P. to gain or lose in a plea of land. with a dou-  
ble voucher.

London, to wit, B. D. whom J. C. voucheth  
to warranty, appoints in his stead R. R. and  
S. S. jointly and severally, against O. P. to  
gain or lose in a plea or land.

If three vouches, there must be three war-  
rants, and so according to the number of  
vouchers.



## The Modern Practice of the

*Note.*—The caption of the *dedimus potestatem* must be dated before the return of the writ of entry, or it is bad.

The same steps are taken to pass a recovery at bar after the warrants are taken, as directed under the foregoing *dedimus*.

Entering  
mittimus  
and trans-  
script.

Take *dedimus* and warrants to curfitor, and he makes out writ of entry, *mittimus*, and *transcript*; pay him for same 1 l. 1 s. that is 7 s. 6 d. for entry, and 13 s. 6 d. for *mittimus* and *transcript*. When done, carry your writ of entry to be compounded; get your draft recovery perused, and rolls to enter proceedings.

As to the  
term rolls  
are to be of.

If the writ of entry and summons are both returnable same term, then the summons roll and recovery rolls must be of same term; if the writ of entry and summons are returnable in different terms, then the summons roll must be of that term entry is returnable.

While writ of entry lies at the alienation office, make out writ of summons and seisin; sign them with prothonotary, and seal them, so that they may be ready to carry with the writ of entry to the return office; pay returning same 4 s. 6 d.

*Note.*—Altho' the tenant appears by warrant of attorney, if the recovery be with a single voucher, or the vouchers come in person, you need no writ of summons.

The return of the writ of summons is by statute 24 Geo. 2. settled to four returns *inclusive*.

Teste of  
writ of sum-  
mons.  
Return of  
writ of sei-  
sin.

Must be four days *inclusive* from the return of writ of entry.

Must be on some return fifteen days at least after teste day of return of writ of summons; if not fifteen between the return of each; the seisin must be returnable forthwith; summons returnable last return of any term except Easter. Seisin must be returnable first return of subsequent term: if returnable last return of Easter, then

then *seisin* must be returnable the second return of *Trinity*.

The fourth day *inclusive* from return of summons. Teste of writ of *seisin*.

The return of writ of *seisin* must be indorsed as directed under recovery at bar. Take writs from return office; carry writ of entry for the attorney-general's hand.

While these writs are passing, you may enter up rolls and exemplify the recovery.

On summons roll, begin recovery in a text Entering.  
hand, *London*, to wit, &c. and continue it in summons.  
that hand till you come to the warrants, (*and roll.*  
*upon this, &c. plea aforesaid, &c.*) which must be wrote in a small hand. This ends the summons roll.

Begin your recovery roll in a small hand thus :

OUR LORD THE KING *hath sent here* Recovery  
*to the justices of the bench, his writ of mittimus, roll.*  
*closed together with the tenor of his said Majesty's*  
*certain writ of DEDIMUS POTESTATEM*  
*for receiving the warrants of attorney, and the*  
*return of the same writ : And also the warrants*  
*of attorney taken thereon in these words :*  
GEORGE the Third, &c. The writ of *mittimus* is entered first.

These writs being entered, begin a new line in a text hand thus :

ELSEWHERE, *as it appears in the term of last past, upon the roll, (that is the summons roll) it is thus contained, Writ of entry returnable, &c.*

LONDON, *to wit*, going on as far as *mercy, &c.* and then in a small hand to the end.

*Notes.*

## The Modern Practice of the

*Note.*—If summons and recovery roll are of the same term, then, instead of such a term last past, say, the same term; if you enter your *mittimus* and *transcript*, after warrants on summons roll, say, *Elsewhere*, as it appears of this same term, on this same roll, it is thus contained, &c.

It must be exemplified on a 10 s. skin of vellum in a text hand, thus :

Manner of  
exemplifying  
recovery.

GEORGE the Third, &c. TO ALL to  
whom these our present letters shall come, greeting:  
KNOW YE, that amongst the pleas of land in-  
rolled at Westminster, before Sir William De  
Grey, Knight, and his brethren our justices of the  
bench of the term of \_\_\_\_\_ in the 12th year  
of our reign, on the \_\_\_\_\_ and  
rolls, (the recovery rolls) it is thus contained,  
ELSEWHERE, as it appears, (as on the roll)  
upon the \_\_\_\_\_ roll, it is thus contained, Writ  
of entry returnable on, &c. LONDON, to wit,  
&c. as in recovery at bar.

When the  
*ad quem diem*  
must be on  
the folding  
up or label.

If the writ of entry or summons be returnable so late in the term, that writ of *seisin* cannot be made returnable the same term; after having awarded the return of *seisin*, go on, *All which*, &c. and on the folding up the exemplification, write in the same hand, *ad quem diem*, &c.

Caveat.

By leave of court it may be entered at prothonotary's office, and with the King's silver, to prevent recovery passing without notice.

If you want to search for a recovery, the warrant of attorney office is the proper place. Officer charges for such search 4 d. a term.

*Bill*



*Bill of Costs for a Fine by Dedimus Potestatem.*

|  | l. | s. | d. |
|--|----|----|----|
| Perusing and abstracting parcels, in order to draw <i>precipe</i> — — —      | 0  | 6  | 8  |
| Drawing <i>precipe</i> for <i>de. po.</i> — — —                              | 0  | 3  | 6  |
| <i>De. po.</i> and fee — — — —   | 1  | 12 | 4  |
| Drawing <i>precipe</i> and concord, & s. ingross and parchment 2 s. 6 d. — — | 0  | 7  | 6  |
| Two commissioners fees on caption — —  | 0  | 13 | 4  |
| Affidavit thereof — — — —  | 0  | 6  | 8  |
| Horse-hire and expences — — —  |    |    |    |
| Paid carriage of caption to <i>London</i> — —                                | 0  | 5  | 0  |
| Judge's <i>allocatur</i> — — — —   | 0  | 4  | 0  |
| Attending thereon — — — —  | 0  | 6  | 8  |

*BILL when taken before the Chief Justice.*

|  | l. | s. | d. |
|--|----|----|----|
| Perusing and abstracting parcels, &c. — —                              | 0  | 6  | 8  |
| Drawing <i>precipe</i> and concord, and ingrossing same on paper — — — | 0  | 7  | 6  |
| Ingrossing same on parchment — — —                                     | 0  | 4  | 0  |
| Attending execution of the cognizors — —                               | 0  | 6  | 8  |
| Fee to chief justice — — — —   | 0  | 12 | 6  |
| Attending thereon at <i>Westminster</i> — —                            | 0  | 6  | 8  |
| Writ of covenant and <i>precipe</i> — — —                              | 0  | 8  | 6  |
| Fees thereon — — — —   | 0  | 6  | 8  |
| Alienation fine — — — —  |    |    |    |
| Small fees — — — — —   | 0  | 3  | 0  |
| Attending commissioners to compound — —                                | 0  | 6  | 8  |
| Return — — — — —   | 0  | 2  | 6  |
| Warrant and filing — — — — —   | 0  | 2  | 0  |
| <i>Custos brevium</i> — — — — —  | 0  | 5  | 4  |
| King's silver — — — — —  | 0  | 4  | 4  |
| Chirographer — — — — —   | 0  | 6  | 8  |
| Indentures — — — — —   |    |    |    |
| Fee on passing — — — — —   | 0  | 13 | 4  |

*Bill*

*Bill of Costs for a Recovery with double  
voucher by De. Po.*

|  | l. | s. | d.    |
|--|----|----|-------|
| Drawing <i>precipe</i> for <i>de. po.</i> and copy                                 | 0  | 3  | 4     |
| <i>De. po.</i> and fee — — — —   | 1  | 12 | 4     |
| Letter with warrant inclosed —   | 0  | 1  | 4     |
| Drawing <i>precipe</i> for writ of entry, and<br>copy — — — — —                    | 0  | 3  | 4     |
| Writ of entry — — — — —  | 0  | 7  | 6     |
| Drawing <i>precipe</i> at bar — — — —  | 0  | 3  | 4     |
| Entering on remembrance roll —   | 0  | 2  | 6     |
| For counting recovery at bar —   | 1  | 0  | 0     |
| Tenant's appearance — — — —  | 0  | 6  | 8     |
| Prothonotary, secondary, and crier   | 0  | 7  | 0     |
| Attending passing recovery at bar  | 0  | 6  | 8     |
| Alienation fine — — — — —  |    |    |       |
| Fees thereon — — — — —   | 0  | 3  | 6     |
| Attending commissioners — — — —  | 0  | 6  | 8     |
| Attorney-general's hand to entry —   | 0  | 10 | 0     |
| Attending him — — — — —  | 0  | 6  | 8     |
| Drawing writ of summon, fo. 4. and<br>copy — — — — —                               | 0  | 5  | 4     |
| Prothonotary entering same —   | 0  | 6  | 6     |
| Writ of summons, stamp, signing,<br>sealing, ingrossing, and fee —                 | 0  | 12 | 1     |
| <i>Note.</i> —The prothonotary remits his<br>fee for signing writ, being 1 s. 4 d. |    |    |       |
| Returning and inrolling writ —   | 0  | 3  | 0     |
| Returning and inrolling writ of entry  | 0  | 3  | 0     |
| <i>Precipe</i> for <i>mittimus</i> and transcript                                  | 0  | 3  | 0     |
| Laid out for same — — — — —  | 0  | 13 | 6     |
| Fee thereon — — — — —  | 0  | 6  | 8     |
| Entering on roll — — — — —   | 0  | 8  | 0     |
| Prothonotary for entry and fee —   | 0  | 6  | 0     |
| Drawing recovery, fo. 12. and copy   | 0  | 16 | 0     |
| Entering on roll — — — — —   | 1  | 0  | 0     |
| Prothonotary for entry — — — —   | 0  | 14 | 6     |
|  |    |    | Stamp |

l. s. d.

|   |   |   |   |   |   |    |   |
|---|---|---|---|---|---|----|---|
| Stamp and parchment for exemplification                   | — | — | — | — | 0 | 13 | 0 |
| Seal and box  | — | — | — | — | 0 | 11 | 8 |
| Writ of seisin (the same <i>items</i> as writ of summons) |   |   |   |   |   |    |   |
| Returning and inrolling                                   | — | — | — | — | 0 | 2  | 0 |
| Filing writs, if in person                                | — | — | — | — |   |    |   |
| Fees for demandant, tenant, and two vouches               | — | — | — | — | 2 | 0  | 0 |
| Drawing <i>precipe</i> and warrant of attorney            | — | — | — | — | 0 | 6  | 8 |
| Ingrossing and parchment                                  | — | — | — | — | 0 | 4  | 0 |
| Two commissioners taking same                             |   |   |   |   |   |    |   |
| Carriage  | — | — | — | — |   |    |   |
| Postage   | — | — | — | — |   |    |   |

*Note.*—If the recovery be of different terms, you add a term-fee for demandant and tenant — — 0 13 4

In the term following, for tenants second appearance, add — — 0 6 8

Serjeant's fees for demandant and tenant on return of writ of entry 3 s. 4 d. each; and on return of writ of summons for demandant and tenant and two vouches 3 s. 4 d. each, out of which his clerk allows attorney passing recovery 1 s. 4 d. each party.

## C O S T S.

There was no such thing as costs of suit at common law, till the statute of *Gloucester*, by which, IT IS ENACTED, That if any person recovered *damages* in a plea personal or mixed, he should have his *costs*.

By stat. 43 *Elix.* IT IS ENACTED, That if on any personal action brought in any of the courts at *Westminster*, not being for any title or interest



interest of lands, or concerning the freehold or inheritance of lands, or for any *battery*, it should appear to the judge who tried same, and so certified by him, that the debt or damages recovered did not amount to 40 s. or above; in every such case, the judge before whom same was tried, should not award greater costs than the amount of such debt or damages, or less at their discretion.

By stat. 22 & 23 Car. 2. IT IS ENACTED, That in all actions of *trespass*, *assault*, and *battery*, and other personal actions, if the judge who tried same does not certify on the back of record, under his hand, that the *assault* or *battery* was sufficiently proved by plaintiff, or that the title or freehold proved by plaintiff, or that the title or freehold of the lands mentioned in plaintiff's declaration was chiefly in question; the plaintiff in such action, in case the jury should find the damages under 40 s. shall not recover more costs than damages; and if more costs should be awarded, such judgment shall be void.

By the 11th and 12th of Will. 3. the above statute is extended to *Wales*, *Chester*, *Lancaster*, and *Durham*.

Note.

By stat. 22 & 23 Car. 2. if defendant justifies by any thing that brings the freehold on the record in question, plaintiff hath costs, though the damages given are under 40 s. and without the judge's certifying same.

By stat. 8 & 9 Will. 3. IT IS ENACTED, That in all actions of *trespass*, if on the trial thereof the judge certifies on the back of record, if defendant is found guilty, that such *trespass* was *wilful* and *malicious*, the plaintiff shall recover his damages and full costs touching the person, and not the title of lands.

By stat. 21 Jac. 1. in actions for *slandrous words*, if damages are under 40 s. plaintiff shall recover no more costs than damages.

In all causes brought from inferior courts, the plaintiffs therein, if they recover, shall have costs, notwithstanding the above statutes.

By the 23 Henry 8. and 4 Jac. 1. *executors and administrators* when plaintiffs are not liable to pay costs, nor are *infants* suing by guardian.

By stat. 23 Hen. 8. persons suing *in forma pauperis* pay no costs, but are punished at the discretion of the court; if dispaupered, court generally orders costs to be taxed, and on non-payment, the party is to be whipped.

By same statute a defendant is intitled to costs, if plaintiff in the action be *non-suited* after the appearance of defendant to such action, or if *verdict* for defendant. This statute, by 4 Jac. 1. is extended to all cases where plaintiff would have had costs in the like case.

By stat. 24 Hen. 8. defendant shall recover no costs on *non-suit* or *verdict*, where plaintiff sues to the King's use.

By stat. 18 Eliz. informers are to pay costs where they receive the whole benefit of the penalty of the statute under which they sue.

The stat. 8 & 9 Will. 3. gives costs on all actions on *demurrer* to the defendant, where plaintiffs in such actions are intitled to costs.

Costs on a *non-pross* are given by these statutes.

In *replevin*, the plaintiff had damages at Costs in re-  
common law, and costs by the statute of *Glou-plevin*.  
*cester*. The avowant or defendant was not intitled to costs by the common law; but by stat. 7 Hen. 8. he is intitled to damages and costs, if the plaintiff in such suit be *non-suited*, or have a *verdict* against him, or be otherwise barred.

By stat. 21 Hen. 8. *rent-charges* are included, so that the avowant avowing for rents, customs, and services, &c. or for damages *feasant*, may recover costs under that statute.

There are no damages on this writ, only re- Costs in er-  
versal or affirmance of the former judgment. ror.

By stat. 3 Hen. 7. defendant in error on judgment affirmed, is intitled to his damages and costs at the discretion of the judges: And by 8 & 9 Will. 3. on judgment for the defendant, if plaintiff brings error on such judgment, and same is affirmed, defendant shall have his costs.

By stat. 3 Hen. 7. no costs where execution executed, and error brought, nor on writ of error on judgment in *formedon*.

In *quare impedit* on error brought, party may recover costs, and so in *assumpsit*.

This court usually refers matters of costs to the prothonotary, who settles same between the parties, except in very particular cases, where court gives special directions therein.

Practical remarks.

All statutes relating to costs are to be construed strictly.

Wherever plaintiff would be intitled to costs, defendant is so reciprocally.

The general practice of the court is not to give costs to the *culprit* on attachment for contempt, though he purges himself on his examination, unless the complaint be very groundless and vexatious.

An executor shall not pay costs upon discontinuing his action, where he is obliged to declare as executor, unless he hath knowingly brought his action wrong.



THE MEASURE (or Rule) of Costs  
agreed to be allowed by the Prothonotaries  
in Michaelmas Term, 7 Geo. 2.

1733.

*Writs.*

|   | l. | s. | d. |
|---|----|----|----|
| <i>Capias</i> into London — — —                                     | 0  | 9  | 6  |
| Into all or any other county or counties — — —                      | 0  | 10 | 6  |
| <i>Capias</i> by continuance into London                            | 0  | 8  | 6  |
| Into any other county — — —   | 0  | 9  | 6  |
| <i>Testatum</i> thereon — — —                                       | 0  | 8  | 6  |
| <i>Non omittas capias</i> — — —                                     | 0  | 9  | 8  |
| <i>Venire</i> — — —   | 0  | 7  | 9  |
| <i>Testatum</i> attachment — — —                                    | 0  | 10 | 0  |
| <i>Habeas corpora</i> — — —   | 0  | 8  | 6  |
| Attachment of contempt — — —  | 0  | 7  | 0  |
| Attachment of privilege — — —                                       | 0  | 7  | 6  |
| Drawing and ingrossing <i>sci. fac. per</i><br>sheet each — — —     | 0  | 0  | 8  |
| Besides fee — — —   | 0  | 6  | 8  |
| Special original, the like <i>per</i> sheet                         | 0  | 0  | 8  |
| Fee — — —   | 0  | 6  | 8  |
| <i>Habeas corpus</i> fee — — —                                      | 0  | 6  | 8  |
| Writ of possession fee 3 s. 4 d. making<br>the writ 1 s. 8 d. — — — | 0  | 5  | 0  |
| <i>Supersedeas</i> — — —  | 0  | 8  | 9  |
| <i>Fi. fa.</i> and <i>ca. fa.</i> each — — —                        | 0  | 6  | 9  |
| <i>Testatum fi. fa.</i> and <i>ca. fa.</i> each                     | 0  | 10 | 0  |
| <i>Spa. duces Tecum</i> — — —                                       | 0  | 7  | 6  |
| Common <i>spa.</i> — — —  | 0  | 6  | 6  |

*Issues, &c.*

|   | l. | s. | d. |
|---|----|----|----|
| Drawing issues <i>per</i> sheet — — —                                 | 0  | 0  | 4  |
| Drawing forejudger 2d. ingrossing<br>the whole <i>per</i> sheet — — — | 0  | 0  | 4  |
| Drawing and ingrossing writs of in-<br>quiries <i>per</i> sheet — — — | 0  | 0  | 4  |
| Besides a fee thereon — — —   | 0  | 3  | 4  |
| Drawing and ingrossing affidavits <i>per</i><br>sheet — — — — —       | 0  | 0  | 8  |
| Drawing judgment 2d. ingrossing<br>the whole <i>per</i> sheet — — —   | 0  | 0  | 4  |

*Preparing for Trial.*

|  | l. | s. | d. |
|--|----|----|----|
| Passing record — — — —   | 0  | 6  | 8  |
| Town witnesses (if the charge exceeds<br>40 s.) allowed in common costs,<br><i>per</i> day — — — —             | 0  | 2  | 6  |
| Country witnesses ditto, <i>per diem</i> — — —   | 0  | 5  | 0  |
| Attending the trial in town, every<br>day 6s. 8d. and on the day of<br>trial between attorney and client — — — | 0  | 13 | 4  |
| If between party and party, in the<br>whole — — — — —  | 0  | 13 | 4  |

*N. B.* Nothing for attending the sheriff or marshal in any case.

*N. B.* Declarations where *ba. cor.* is brought, to follow the office where *ba. cor.* is signed.

No attorney to be privileged in any suit, unless it appear on the face of declaration, that he sues for fees; and if part be for fees, and the other counts not for fees, to be paid for the latter.

No declaration to be allowed, if plaintiff is summoned the day before the

## Court of Common Pleas:

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the return; but if served upon the return day, the declaration and entry on the roll to be allowed, if declaration produced.

### *Arrests and Notices.*

|  | l. | s. | d. |
|--|----|----|----|
| For service of process — — —   | 0  | 5  | 0  |
| For arrests — — — — —  | 0  | 10 | 0  |
| Nothing more to be allowed for <i>extra</i> expence and trouble, even between attorney and client, except it be by the client's exprefs orders.  |    |    |    |
| Service of notice of declaration, or executing a writ of inquiry, 3 d. <i>per</i> mile, if under 20 miles, to and from the place, 1 s. 6 d. <i>per</i> mile in the whole; the like allowance in case of conduct money 3 d.—If above 20 miles for a neighbouring attorney — — — — — |    |    |    |
|  | 0  | 10 | 6  |

### *Actions on Judgments or penal Statutes.*

|                                | l. | s. | d. |
|--------------------------------|----|----|----|
| Drawing <i>per</i> sheet — — — | 0  | 0  | 8  |
| Copying — — — — —              | 0  | 0  | 8  |
| Entering — — — — —             | 0  | 0  | 8  |
| Term fee — — — — —             | 0  | 6  | 8  |

### *Costs on Bail-bonds.*

|   | l. | s. | d. |
|---|----|----|----|
| Common costs in the sheriff's name                                      | 2  | 10 | 0  |
| The like on an assigning, judgment, of <i>nil deb.</i> if 12 sheets — — | 4  | 10 | 0  |
| For every three sheets more — —   | 0  | 10 | 0  |
| On <i>comperuit ad diem</i> , the old way                               | 3  | 10 | 0  |
| On the like the new way — —   | 5  | 10 | 0  |
| For every three sheets above twelve in declarations — — — — —           | 0  | 10 | 0  |



*Demurrers.*

|   | l. | s. | d. |
|---|----|----|----|
| <i>Concilium</i> and attending — — —                            | 0  | 13 | 10 |
| Argument and attendance — —                                     | 1  | 7  | 8  |
| <i>Ulterius concilium</i> (besides rules and service) — — — — — | 1  | 7  | 8  |

*Non Pros.*

|  | l. | s. | d. |
|--|----|----|----|
| For not declaring where appearance                   | 1  | 13 | 4  |
| If with bail more — — —                              | 0  | 10 | 0  |
| For not replying general issue appearance — — — — —  | 2  | 13 | 4  |
| If bail more — — — — —                               | 0  | 10 | 0  |
| For not joining in demurrer to declaration — — — — — | 3  | 6  | 8  |
| Bail more — — — — —                                  | 0  | 10 | 0  |
| For every other pleading more, if short — — — — —    | 1  | 0  | 0  |
| For not entering issue appearance                    | 3  | 3  | 4  |
| Bail more — — — — —                                  | 0  | 10 | 0  |
| For every other count more than the first — — — — —  | 0  | 3  | 0  |

*Cognovit.*

|                                 | l. | s. | d. |
|---------------------------------|----|----|----|
| One declaration the same term — | 5  | 0  | 0  |
| Of different terms — — —        | 5  | 10 | 0  |
| Every nar. (count) more — —     | 0  | 10 | 0  |
| With bail more — — — — —        | 0  | 10 | 0  |

*By Default.*

|                                     | l. | s. | d. |
|-------------------------------------|----|----|----|
| On inquiry one nar. — —             | 7  | 10 | 0  |
| Every nar. more — — —               | 0  | 10 | 0  |
| If plaintiff enters appearance more | 1  | 0  | 0  |

If

l. s. d.

|  |   |    |    |
|--|---|----|----|
| If in trespass, assault, imprisonment,<br><i>Et.</i> — — — — — | 7 | 16 | 10 |
| If plaintiff enters appearance —                               | 8 | 16 | 8  |

*Trial.*

l. s. d.

|   |    |    |   |
|---|----|----|---|
| Common costs, one nar. (count)                                    | 14 | 10 | 0 |
| For every nar. more — — —   | 0  | 10 | 0 |
| Trespass, assault, or imprisonment,<br>five sheets or under — — — | 14 | 16 | 0 |
| Every three sheets more — — —                                     | 0  | 10 | 0 |

*In Ejectment.*

l. s. d.

|  |    |    |   |
|--|----|----|---|
| One demise — — — — —   | 15 | 16 | 8 |
| Every demise more — — —  | 0  | 10 | 0 |
| Attending taxing costs, tho' many<br>causes in the bill, only considered<br>as one cause, so only — — —  | 0  | 3  | 4 |
| Common costs for not confessing<br>lease, entry, and ouster on the<br>rule — — — — —   | 16 | 16 | 8 |
| To allow 1 s. 4 d. for every defendant<br>the plaintiff appears for, over and<br>above the 5 s. 4 d. allowed for the<br>first defendant.             |    |    |   |
| Entering appearance between attorney<br>and client — — — — —   | 0  | 6  | 4 |
| Copies of affidavit in order to shew<br>cause, <i>per</i> sheet — — — — —  | 0  | 0  | 4 |
| N. B. Attorney no privilege where<br>he is defendant, either as to ap-<br>pearance or pleading.  |    |    |   |
| No maps to be allowed on trials <i>inter</i><br><i>partes</i> .  |    |    |   |
| No wrong or under charge to be sup-<br>plied in any manner, except in<br>fee for passing record, when only<br>charged 3 s. 4 d. instead of 6 s. 8 d. |    |    |   |

DIREC-

**DIRECTIONS of WRITS to  
the several Cities, Towns corporate,  
and particular Jurisdictions throughout  
England.**

- Bath.** To the mayor, aldermen, and recorder of our city of *Bath*, in the county of *Somerset*, and to, &c.
- Bristol.** To the mayor, aldermen, and sheriffs of our city of *Bristol*, and to, &c.
- Bridewell.** To the mayor, commonalty, and citizens of our city of *London*, and also to the governors of the hospitals of *Bridewell* and *St. Thomas* the apostle, and to, &c.
- Canterbury.** To the mayor and commonalty of our city of *Canterbury*, and to, &c.
- Carlisle.** To the mayor and bailiffs of our city of *Carlisle*, in the county of *Cumberland*, and to, &c.
- Chester city.** To the sheriffs of our city of *Chester*, greeting.  
**County Palatine of Chester.** To our chamberlain of our county palatine of *Chester*, or to his deputy there, greeting.
- Colchester.** To the mayor, aldermen, and burgesses of our borough of *Colchester*, in the county of *Essex*, and to, &c.
- Coventry.** To the mayor, bailiffs, and commonalty of our city of *Coventry*, and to, &c.
- Chichester.** To the mayor, aldermen, and commonalty of our city of *Chichester*, in the county of *Sussex*, and to, &c.
- Cinque ports and Dover, Sandwich, Rumnor, Winchelsea, and Rye.** To the constable of our castle of *Dover*, or his deputy there, greeting.
- Borough Court.** To the steward of the liberty of the mayor and commonalty and citizens of the city of *London*, of their town and borough of *Southwark*, and also to the bailiff of the said liberty, greeting.

To



- To the mayor and burgesſes of our borough *Derby*.  
of *Derby*, in the county of *Derby*, and to,  
&c.
- To the Reverend Father in Chriſt, by Divine Providence *Bishop of Darham*, or *County Palatine of Durham*.  
to his deputy there.
- To the mayor, bailiffs, and commonalty of our *Exeter*.  
city of *Exeter*, in the county of *Devon*, and  
to, &c.
- To the warden of our priſon of the *Fleet*, greet-  
ing.
- To the mayor, aldermen, and ſheriffs of our *Gloucester*.  
city of *Gloucester*, and to, &c.
- To the mayor, aldermen, ſheriffs, and com-  
monalty of our city of *Hereford*.
- To our chancellor of our county palatine of *County Palatine of Lancaster*, or to his deputy there, greeting.
- To the mayor, ſheriffs, and commonalty of the *Lincoln*.  
city of *Lincoln*.
- To the mayor and aldermen of our city of *Litchfield*.  
*field*, in the county of *Stafford*, and to, &c.
- To the judges of our court of our palace of *Marſhalſea Court*.  
*Westminster*, and to each of them, greeting.
- To the ſteward of the court of our marſhal of *Marſhal of our household*, and to our marſhal of our  
household, and alſo to the judges of the court  
of the verge of our household, and to every  
of them. *the Houſe- hold, vulgarly called the Board of Green cloth.*
- To the keeper of our priſon of *Newgate, London*.  
*Newgate*.
- To the mayor, aldermen, ſheriffs, and com-  
monalty of the city of *Norwich*.
- To the mayor, bailiffs, and commonalty of the *Oxford*.  
city of *Oxford*, in the county of *Oxford*.
- To the mayor, aldermen, and commonalty of *Rocheſter*.  
our city of *Rocheſter*, in the county of *Kent*.
- To the mayor and commonalty of the city of *Salisbury*.  
*New Sarum*, in the county of *Wilts*.

To

- Shrewsbury.** To the mayor, aldermen, and burgesſes of the town of *Shrewsbury*, in the county of *Salop.*
- Savoy.** To the bailiff of the liberty of our dutchy of *Lancaster* in the *Strand*, in our county of *Middleſex.*
- New Sarum City.** To the bailiff of the liberty of the Biſhop of *Salisbury*, of the city of *New Sarum*, in the county of *Wils.*
- Manor of Southwark.** To the ſteward of the court of the liberty of the Reverend Father in Chriſt Biſhop of *Wincheſter*, of his manor of *Southwark*, in the county of *Surry.*
- Stebon Heath, alias Stepney.** To *Delme Vanbeythuyſen*, Eſq; ſteward of his Majeſty's court of record, held within the manors of *Stepney* and *Hackney*, in the county of *Middleſex*, the hamlets and liberties of the ſame, and alſo to the prethonotary of the ſame court.
- Tower of London.** To the conſtable, or his lieutenant, or deputies, of our *Tower of London*, as alſo to the ſteward of the ſame, and to, &c.
- Windsor.** To the mayor, bailiffs, and burgesſes of the borough of *New Windsor*, in the county of *Berks.*
- Westminster.** To the high bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster.*
- Windsor caſtle.** To conſtable of our honour and caſtle of *Windsor*, and keeper of our ſaid foreſt, or to his lieutenant, or deputy there.
- Worceſter.** To the mayor, aldermen, and ſheriff of our city of *Worceſter.*
- York.** To the mayor, aldermen, ſheriffs, and commonalty of the city of *York.*

*Cities and Towns having Sheriffs.*

|         |   |             |   |   |      |             |
|---------|---|-------------|---|---|------|-------------|
| Cities. | { | Bristol,    | - | - | two. | } Sheriffs. |
|         |   | Canterbury, | - | - | one. |             |
|         |   | Coventry,   | - | - | two. |             |
|         |   | Exeter,     | - | - | two. |             |
|         |   | Gloucester, | - | - | two. |             |
|         |   | Litchfield, | - | - | one. |             |
|         |   | Lincoln,    | - | - | two. |             |
|         |   | London,     | - | - | two. |             |
|         |   | Norwich,    | - | - | two. |             |
|         |   | Worcester,  | - | - | one. |             |
|         |   | York,       | - | - | two. |             |

|        |   |                      |   |      |             |
|--------|---|----------------------|---|------|-------------|
| Towns. | { | Kingston upon Hull,  |   | one. | } Sheriffs. |
|        |   | Nottingham,          | - | two. |             |
|        |   | Newcastle upon Tyne, |   | one. |             |
|        |   | Pool,                | - | one. |             |
|        |   | Southampton,         | - | one. |             |

*Nota.*—For further directions to towns corporate, &c. Vide *The Attorney's Complete Guide in the Practice of the Court of King's Bench*, page 371.

**F I N I S.**